

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CATHY CALDWELL, an individual,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. CV-06-1088-
)	MHT
SMART ALABAMA, LLC, a legal entity,)	
)	
Defendant.)	

**DEFENDANT SMART ALABAMA, LLC'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

COMES NOW defendant SMART Alabama, LLC ("SMART"), and pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, moves this Court to dismiss the Complaint in this case and render judgment on the pleadings. In the alternative, SMART moves this Court to enter summary judgment in its favor pursuant to Rule 56 of the Federal Rules of Civil Procedure. In support of its Motion, SMART states as follows:

I. PROCEDURAL HISTORY

1. On December 8, 2006, plaintiff Cathy Caldwell filed the above-captioned civil action alleging sex discrimination, sexual harassment, hostile environment, and retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). All of her claims arose under Title VII. (Compl., Doc. No. 1).

2. Plaintiff's Complaint alleged that, at all times relevant to this action, she was employed by SMART. (Compl., ¶4, Doc. No. 1).

3. On December 27, 2006, SMART filed an Answer, denying that it employed plaintiff. (Answer ¶¶4, 6, Doc. No. 4).

4. On June 27, 2007, SMART deposed plaintiff. Tab A (Pl.'s Depo. at p. 1).

5. After the deposition, on the same day, plaintiff filed a Motion for Leave to Amend Complaint to add state law claims and to add Rance Maddox as a defendant. (Pl.'s Mot. for Leave to Amend Compl., Doc. No. 15).

6. Plaintiff's counsel filed this Motion after plaintiff's testimony demonstrated that SMART was not her employer, thereby defeating plaintiff's Title VII claims. (Pl.'s Mot. for Leave to Amend Compl., ¶1, Doc. No. 15).

II. UNDISPUTED FACTS

7. At all times relevant to plaintiff's claims, she was employed by Alany Divisions, Inc. ("ADI"), a company that provided security services to SMART. (Pl.'s Mot. for Leave to Amend Compl., ¶1); Tab A (Pl.'s Depo. pp. 24-32, 34, 37-42, 49, 51-55, 62-63, 65-67 & DX 1, DX 2); Tab B (Eisenberger Aff., ¶4).

8. Plaintiff was hired by Cliff Eisenberger, Owner and President of Operations of ADI; SMART did not participate in the hiring process, nor was

SMART involved in the decision to hire plaintiff. Tab B (Eisenberger Aff., ¶4); Tab C (Sport Aff., ¶¶3-5).

9. During the hiring process, plaintiff did not communicate with anyone at SMART regarding her offer of employment, only Misty Dix, an ADI employee. (Pl.'s Depo. pp. 24-31); Tab B (Eisenberger Aff., ¶6); Tab C (Sport Aff., ¶6).

10. ADI determined the rate of plaintiff's pay, paid her, deducted taxes, and maintained workers' compensation coverage over her throughout her employment as an ADI security guard working at SMART. Tab A (Pl.'s Depo. pp. 62-63 & DX 2); Tab B (Eisenberger Aff., ¶¶3-4); Tab C (Sport Aff., ¶¶3-5).

11. Plaintiff was trained and supervised by Stan Adair, a Supervisor employed by ADI. Tab A (Pl.'s Depo. pp. 34, 37-42); Tab B (Eisenberger Aff., ¶¶3-4); Tab C (Sport Aff., ¶¶3-5).

12. ADI maintained control over the terms and conditions of plaintiff's employment, and was responsible for hiring and firing security guards such as plaintiff. Tab B (Eisenberger Aff., ¶¶3-4); Tab C (Sport Aff., ¶¶3-5).

13. Eisenberger and Misty Dix, also of ADI, scheduled plaintiff's work. Tab A (Pl.'s Depo. pp. 49, 51-55, 60 & DX 1); Tab B (Eisenberger Aff., ¶¶3-4); Tab C (Sport Aff., ¶4).

14. Plaintiff wore a blue uniform, as did all ADI guards, which were not worn by SMART employees. Furthermore, SMART employees were required to

wear security badges that ADI employees were not required to wear. Tab A (Pl.'s Depo. pp. 29, 31-32, 53, 65-67).

15. SMART and ADI are separately owned and operated companies. The companies do not share ownership, management, or employees. Tab B (Eisenberger Aff., ¶5); Tab C (Sport Aff., ¶7).

III. ARGUMENT

Plaintiff's claims must be dismissed. She cannot maintain any of her claims in this lawsuit because she was not "employed" by SMART, as required by Title VII. The undisputed facts, in addition to plaintiff's Motion for Leave to Amend the Complaint, demonstrate that ADI, not SMART, was plaintiff's employer. The existence of a Title VII "employer" is a jurisdictional prerequisite to maintaining a lawsuit under the statute. See 42 U.S.C. § 2000e(b); see also Virgo v. Riviera Beach Assocs., Ltd., 30 F.3d 1350, 1359 (11th Cir. 1994) ("Before a district court may entertain a . . . Title VII claim, the . . . actor must be an 'employer'"). An entity must control the essential terms and conditions of an individual's employment to be deemed an employer and subject to suit under Title VII. See e.g., Llampallas v. Mini-Circuits, Lab, Inc., 163 F.3d 1236, 1243-45 (11th Cir. 1998).

The undisputed facts in the record reveal that SMART did not control the essential terms and conditions of plaintiff's employment. (Facts, ¶¶8-13).

Importantly, plaintiff was compensated by ADI throughout her employment; SMART played no role in decisions related to plaintiff's compensation. (Facts, ¶¶9-10). See also Llampallas, 163 F.3d at 1243 ("only individuals who receive compensation from an employer can be deemed 'employees' under the statute") (citations omitted). Furthermore, plaintiff was hired, trained, and supervised by ADI, she wore an ADI uniform, and ADI scheduled plaintiff's work. (Facts, ¶¶8-13). See also Fike v. Gold Kist, Inc., 514 F. Supp. 722, 727 (N.D. Ala. 1981) (holding that "control" of essential terms and conditions requires "actual and active control of day-to-day labor practices" in the area of human resources or personnel). Because SMART did not compensate plaintiff or otherwise control the essential terms and conditions of her employment, it cannot be considered her employer for purposes of Title VII.

SMART further does not meet the elements for being a joint employer or an integrated entity with ADI under Title VII. The Eleventh Circuit reviews the following elements in determining the existence of an employment relationship in that context: "(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." See Lyes v. City of Riviera Beach, 166 F.3d 1332, 1341 (11th Cir. 1999) (citations omitted). Of these factors, centralized control of labor operations--the ability to make decisions about essential terms or conditions of employment--is the

most determinative factor in finding an entity to be an "employer" under Title VII. E.g., Fike, 514 F. Supp. at 727. Because SMART played absolutely no role in decisions affecting essential terms and conditions of plaintiff's employment, it cannot be deemed a joint employer or integrated entity with ADI, who solely made those decisions. (Facts, ¶¶8-13). Plaintiff also cannot establish any of the other factors, since the companies are separately owned and operated and do not share common management. (Facts, ¶14).

Because SMART was not plaintiff's employer, this Court lacks subject matter jurisdiction over her Title VII claim pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. See 42 U.S.C. § 2000e(b); see also Virgo, 30 F.3d at 1359. Alternatively, because there is no genuine issue of material fact, plaintiff's Title VII claims are due to be dismissed.

WHEREFORE, PREMISES CONSIDERED, defendant SMART respectfully requests this Honorable Court to dismiss the plaintiff's Complaint for lack of subject matter jurisdiction. In the alternative, SMART requests that this Court grant summary judgment in its favor.

/s/ Ronald W. Flowers

Marcel L. Debruge (DEB006)

Ronald W. Flowers (FLO031)

Kathryn M. Willis (MOR130)

Sonya E. Eubank (EUB007)

Attorneys for Defendant

SMART ALABAMA, LLC

OF COUNSEL:

BURR & FORMAN LLP

420 North 20th Street, Suite 3400

Birmingham, Alabama 35203

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following by directing same to their office addresses through first-class, United States mail, postage prepaid, on this the 26th day of July, 2007:

Richard F. Horsley
Lindsey O. Hill
KING, HORSLEY & LYONS, LLC
1 Metroplex Drive, Ste. 280
Birmingham, AL 35209

/s/ Ronald W. Flowers
OF COUNSEL

TAB “A”

FREEDOM COURT REPORTING

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1 IN THE UNITED STATES DISTRICT COURT FOR
2 THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
4

5 CASE NUMBER: 2:06CV1088-MHT

ORIGINAL

6
7 CATHY CALDWELL, an individual,
8 Plaintiff,
9 vs.

10
11 SMART ALABAMA, LLC, a legal entity,
12 Defendant.
13

14 S T I P U L A T I O N

15 IT IS STIPULATED AND AGREED by
16 and between the parties through their
17 respective counsel, that the deposition
18 of CATHY CALDWELL may be taken before
19 Leslie K. Hartsfield, at the offices of
20 Burr & Forman, LLP, 201 Monroe Street,
21 Suite 1950, Montgomery, Alabama, 36104,
22 DEPOSITION OF CATHY CALDWELL
23 taken on the 27th day of June, 2007.

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1 IT IS FURTHER STIPULATED AND
2 AGREED that the signature to and the
3 reading of the deposition by the witness
4 is waived, the deposition to have the
5 same force and effect as if full
6 compliance had been had with all laws
7 and rules of Court relating to the
8 taking of the deposition.

9 IT IS FURTHER STIPULATED AND
10 AGREED that it shall not be necessary
11 for any objections to be made by counsel
12 to any questions except as to the form
13 or leading questions, and that counsel
14 for the parties may make objections and
15 assign grounds at the time of the trial,
16 or at the time said deposition is
17 offered in evidence, or prior thereto.

18 IT IS FURTHER STIPULATED AND
19 AGREED that the notice of filing of the
20 deposition by the Commissioner is
21 waived.
22
23

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4
5 CASE NUMBER: 2:06CV1088-MHT

6
7 CATHY CALDWELL, an individual,
8 Plaintiff,
9 vs.

10
11 SMART ALABAMA, LLC, a legal entity,
12 Defendant.

13
14 BEFORE:

15 LESLIE K. HARTSFIELD,
16 Commissioner.

17
18 APPEARANCES:

19 BURR & FORMAN, LLP, by Mr. Ronald
20 Flowers, Jr. and Ms. Sonya E. Eubank,
21 420 20th Street North, Suite 3400,
22 Wachovia Tower, Birmingham, Alabama,
23 35203, appearing on behalf of the

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1 Defendant.

2 GOOZEE, KING & HORSLEY, LLP, by
3 Mr. Richard F. Horsley, 3300 Cahaba
4 Road, Suite 200, Birmingham, Alabama,
5 35223, appearing on behalf of the
6 Plaintiff.

7 THOMAS F. KELLY, JR., PC,
8 ATTORNEY AT LAW, 17 Court Square,
9 Clayton, Alabama, 36016-0605, appearing
10 on behalf of the Plaintiff.

11
12 ALSO PRESENT:

13 Gary Sport
14

15 *****
16

17 I, LESLIE K. HARTSFIELD, a Court
18 Reporter of Prattville, Alabama, acting
19 as Commissioner, certify that on this
20 date, as provided by the Federal Rules
21 of Civil Procedure and the foregoing
22 stipulation of counsel, there came
23 before me at the offices of Burr &

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1 Forman, LLP, 201 Monroe Street, Suite
2 1950, Montgomery, Alabama, 36104,
3 beginning at 10:06 a.m., CATHY CALDWELL,
4 witness in the above cause, for oral
5 examination, whereupon, the following
6 proceedings were had:

8 CATHY CALDWELL

9 being first, duly sworn, was examined
10 and testified as follows:

11
12 THE REPORTER: Usual
13 stipulations?

14 MR. HORSLEY: Sure.

15 MR. FLOWERS: Yes.

16
17 EXAMINATION BY MR. FLOWERS:

18 Q. Would you please state your
19 name for the record?

20 A. Cathy Caldwell.

21 Q. Ms. Caldwell, my name is Ron
22 Flowers. I'm here to take your
23 deposition in a case you filed against

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1 SMART Alabama.

2 A. Okay.

3 Q. Have you ever had your
4 deposition taken before?

5 A. No.

6 Q. Let me just lay out a few
7 ground rules. If you don't understand a
8 question, you need me to clarify, will
9 you ask me to do so?

10 A. Okay.

11 Q. And that way if you don't
12 and you answer the question, the record
13 will reflect that you understood the
14 question, your answer was responsive to
15 the question, you understand that?

16 A. Yes.

17 Q. And it's a good answer, yes
18 answer, so make sure your answers are in
19 audible form rather than an uh-huh or
20 huh-uh or a shaking or nodding of your
21 head because the court reporter can't
22 determine what your response would be in
23 that case, you understand?

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1 A. Yes.

2 Q. And if you need a break
3 during the deposition, just let me know.

4 A. Okay.

5 Q. You understand that the
6 questions you're being asked today are
7 under penalty of perjury?

8 A. Yes.

9 Q. Have you taken any
10 medications today?

11 A. No.

12 Q. Have you ever been a
13 plaintiff or defendant in a lawsuit
14 before?

15 A. No.

16 Q. Have you ever brought any
17 other EEOC charges against an employer
18 besides the one you brought against
19 SMART?

20 A. No.

21 Q. Have you ever raised a claim
22 with the Department of Labor?

23 A. No.

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1 Q. Have you ever given sworn
2 testimony before to the best of your
3 knowledge?

4 A. No.

5 Q. Can you describe for me
6 briefly your educational background,
7 high school and any other education?

8 A. I attended some college.
9 I'm still attending.

10 Q. Where did you go to high
11 school?

12 A. Charles Henderson.

13 Q. Charles Vinson?

14 A. Charles Henderson High
15 School.

16 Q. Where is that?

17 A. Troy, Alabama.

18 Q. Did you graduate?

19 A. No.

20 Q. Did you get your -- how many
21 years of school did you go through?

22 A. You mean high school?

23 Q. Uh-huh (affirmative

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1 response) .

2 A. Three.

3 Q. Did you get your GED?

4 A. Yes.

5 Q. When was that?

6 A. '05.

7 Q. You said you're attending
8 some college now?

9 A. Yes.

10 Q. Where is that?

11 A. In Troy, Alabama.

12 Q. Troy University?

13 A. Yes.

14 Q. How many years of school
15 have you attended?

16 A. Two.

17 Q. What is your major if you
18 have one?

19 A. Accounting.

20 Q. Are you a full-time or
21 part-time student?

22 A. Full-time.

23 Q. Any other schooling you've

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1 had since high school or since your
2 GED?

3 A. No.

4 Q. What's your date of birth?

5 A. .

6 Q. What's your Social Security
7 number?

8 A. .

9 Q. Are you married?

10 A. Divorced.

11 Q. How long have you been
12 divorced?

13 A. Three years.

14 Q. What was your husband's
15 name?

16 A. Marcus.

17 Q. Last name?

18 A. Caldwell.

19 Q. How long were you married?

20 A. Three years.

21 Q. So you got married in around
22 2001?

23 A. Uh-huh (affirmative)

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1 response). Yes.

2 Q. Is that your only
3 marriage?

4 A. Yes.

5 Q. You have any children?

6 A. Yes.

7 Q. How many?

8 A. Two.

9 Q. What are their names and
10 ages?

11 A. Michael Jenkins, age 8;
12 Marshay Caldwell, age 6.

13 Q. Do they live with you?

14 A. Yes.

15 Q. Where does Marcus Caldwell
16 live now, your ex-husband?

17 A. Montgomery.

18 Q. What is his job?

19 A. He lay bricks.

20 Q. Is he employed by a specific
21 company?

22 A. No. He's like mainly
23 self-employed.

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1 Q. What is your current home
2 address?

3 A. 6053 Alabama Highway 87.

4 Q. What's the town and zip
5 code?

6 A. Troy, Alabama, 36079.

7 Q. How long have you lived at
8 that address?

9 A. 2 1/2 years.

10 Q. Who else has lived with you
11 at that address during that time?

12 A. My mother.

13 Q. Your children?

14 A. And children.

15 Q. Anybody else?

16 A. That's it.

17 Q. Where did you live before
18 that?

19 A. Pineview Trailer Park.

20 Q. Is that in Troy?

21 A. Yes.

22 Q. How long did you live
23 there?

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1 A. I lived there about five
2 years.

3 Q. Was that with
4 Mr. Caldwell?

5 A. Yes.

6 Q. So when you were employed as
7 a security guard for ADI working at
8 SMART, you were living at your current
9 address; is that correct?

10 A. Yes.

11 Q. During the time you were
12 employed as a security guard for ADI
13 working at SMART, did you have a cell
14 phone?

15 A. Cell phone, yes.

16 Q. Do you recall the number?

17 A. No.

18 Q. Do you have a cell phone
19 now?

20 A. No.

21 Q. When did you stop using the
22 cell phone that you had at that time?

23 A. I think I was -- I'm not

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1 sure.

2 Q. Do you recall the service
3 provider?

4 A. Unicell.

5 Q. Have you ever been
6 arrested?

7 A. Yes.

8 Q. When was that?

9 A. January the 30th.

10 Q. Of this year?

11 A. Yes.

12 Q. What was the arrest for?

13 A. Traffic ticket.

14 Q. What type of traffic
15 ticket?

16 A. Speeding, driving while
17 revoked.

18 Q. Driving while revoked?

19 A. Yes.

20 Q. Why was your license
21 revoked?

22 A. I kept getting tickets and I
23 wasn't paying them.

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1 Q. Have you been to court over
2 that ticket?

3 A. Yes.

4 Q. Has it been resolved?

5 A. Yes.

6 Q. Were you convicted of
7 driving while your license was
8 revoked?

9 A. Convicted, I don't
10 understand. What you mean?

11 Q. Did you serve any jail
12 time?

13 A. No.

14 Q. What county was that in, do
15 you know?

16 A. Pike.

17 Q. Is that the only time you've
18 been arrested?

19 A. Yes.

20 Q. Have you ever declared
21 bankruptcy?

22 A. No.

23 Q. Do you have any plans to

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1 declare bankruptcy?

2 A. No.

3 Q. Do you currently have any
4 medical conditions?

5 A. No.

6 Q. Did you have any medical
7 conditions at the time you were employed
8 as a security guard for ADI?

9 A. No.

10 Q. Where were you employed
11 directly before the time you became a
12 security guard for ADI?

13 A. At the time I became?

14 Q. Before, the place you were
15 employed before you became a security
16 guard for ADI.

17 A. I don't remember.

18 Q. Have you been employed
19 anywhere since you resigned from being a
20 security guard at ADI?

21 A. Yes.

22 Q. Where was the first place
23 you held employment after that?

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1 A. Fred's.

2 Q. Fred's Discount Store?

3 A. Uh-huh (affirmative
4 response).

5 Q. What was your position?

6 A. Cashier, stocker.

7 Q. How long after you left your
8 employment for ADI did you become a
9 cashier, stocker for Fred's?

10 A. I just started working at
11 Fred's this year.

12 Q. 2007. Do you recall what
13 month?

14 A. I don't remember.

15 Q. Was that the first place you
16 were employed after --

17 A. Yes.

18 Q. Any idea how many months
19 you've been working there?

20 A. I want to say approximately
21 three months.

22 Q. You're still employed by
23 Fred's --

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1 A. Yes.

2 Q. -- as a cashier, stocker?

3 A. Yes.

4 Q. How many hours do you work a
5 week?

6 A. Sometimes I work -- I might
7 work 26 hours and the next week I might
8 work 14. It all depends.

9 Q. Which Fred's are you working
10 at, which location?

11 A. I'm working at store 3058.

12 Q. Is that in Troy?

13 A. Yes.

14 Q. Is there any other
15 employment that you've held since you
16 left your employment as a security guard
17 for ADI?

18 A. No.

19 Q. Do you recall any places in
20 which you were employed before you began
21 your employment as a security guard for
22 ADI?

23 A. Do I recall --

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1 Q. Were you employed anywhere
2 at any time before you started as a
3 security guard for ADI?

4 A. Yes.

5 Q. What are those places?

6 A. Wal-Mart, KFC, Pike Manor
7 Nursing Home.

8 Q. Pike Manor?

9 A. Uh-huh (affirmative
10 response). And that's about it.

11 Q. What was your position for
12 Wal-Mart?

13 A. Cashier.

14 Q. How long did you hold that
15 job?

16 A. I don't remember.

17 Q. Do you remember the years or
18 around the year in which you held it?

19 A. It's been a while.

20 Q. Any idea how long before you
21 started as a security guard for ADI?

22 A. No.

23 Q. Which Wal-Mart was your

FREEDOM COURT REPORTING

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1 employment as a cashier?

2 A. I don't know the store
3 number.

4 Q. Was it in Troy?

5 A. Yes.

6 Q. What was your position for
7 KFC?

8 A. Packer.

9 Q. Do you know how long you
10 held that position?

11 A. I worked there a year.

12 Q. Do you recall when?

13 A. Like -- I think like in
14 2000, something like that.

15 Q. Do you recall which KFC it
16 was, was it in Troy?

17 A. Yes.

18 Q. What street or road?

19 A. It was just on U.S. Highway
20 231.

21 Q. What was your position for
22 Pike Manor Nursing Home?

23 A. Dietary aide.

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1 Q. How long did you hold that
2 position?

3 A. I worked there two years.

4 Q. Do you recall what years you
5 worked there?

6 A. No.

7 Q. Was that -- would that have
8 been the last position you held before
9 ADI?

10 A. I think Wal-Mart was my last
11 position as far as ADI.

12 Q. How did your employment at
13 Wal-Mart end?

14 A. Just quit.

15 Q. What's the reason for
16 quitting?

17 A. Not having enough hours.

18 Q. What was your reason for
19 leaving KFC?

20 A. Surgery.

21 Q. What was your reason for
22 leaving Pike Manor Nursing Home?

23 A. Medical leave.

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1 Q. Did you attempt to return to
2 either KFC or Pike Manor after medical
3 leave?

4 A. Huh-uh (negative response).

5 MR. HORSLEY: Say no.

6 A. Oh, I'm sorry. No.

7 Q. Thanks. During the time you
8 were employed as a security guard for
9 ADI, did you have any other employment?

10 A. No.

11 Q. Were you attending school at
12 that time at any time?

13 A. Yes.

14 Q. Which school was that?

15 A. Troy University.

16 Q. Throughout the time you were
17 a security guard or just part of it?

18 A. Part of the time.

19 Q. Were you a full-time student
20 with Troy University?

21 A. Yes.

22 Q. Do you recall which semester
23 you began for Troy University?

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1 A. Summer '05.

2 Q. So you got your GED in the
3 spring of '05, I assume?

4 A. I'm not sure.

5 Q. Since your employment as a
6 security guard for ADI, are there any
7 places other than Fred's with which you
8 sought employment from?

9 A. No.

10 Q. So Fred's was the first
11 place you tried to get a job with
12 after --

13 A. Yes.

14 Q. -- ADI? How did you come to
15 work as a security guard for ADI?

16 A. I went down there just
17 looking for a job and I was looking for
18 something that fit in with my, you know,
19 schedule as far as school. And I seen a
20 guard sitting behind the desk and she
21 was just telling me about a position
22 they had available.

23 Q. Did you know that there were

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1 any positions available before you went
2 there?

3 A. No.

4 Q. When you say you went there,
5 were did you go?

6 A. SMART.

7 Q. Do you know the name of the
8 guard who was behind the desk?

9 A. Misti Dicks.

10 Q. What did she tell you once
11 you asked if there were any positions
12 available?

13 A. No. I asked for a
14 application for SMART.

15 Q. What did she say in response
16 to that?

17 A. That -- I asked her did they
18 have any open positions and she was like
19 they had a position open for a guard but
20 it was only for weekends.

21 Q. Did you ask her if SMART had
22 any positions open or did you just say
23 do they have any positions open?

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1 A. Does SMART have any
2 positions available.

3 Q. Did she give you an
4 application?

5 A. Yes.

6 Q. Do you recall what the
7 application -- what company the
8 application was for?

9 A. No, I don't.

10 Q. Did you fill the application
11 out there or did you take it with you?

12 A. I filled it out there.

13 Q. Turned it into Misty; is
14 that correct?

15 A. Yes.

16 Q. Did she say anything else to
17 you during the time you spent with
18 her?

19 A. No.

20 Q. Did you talk with anybody
21 else in that visit to the SMART
22 facility?

23 A. No.

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1 Q. She said they had a guard
2 position only on weekends?

3 A. Yes.

4 Q. Did she give you any
5 information about that position?

6 A. No.

7 Q. Did she tell you you had to
8 have any qualifications for that
9 position?

10 A. No.

11 Q. What was the next thing you
12 heard regarding that position?

13 A. I just got a call, said come
14 in.

15 Q. How long after the visit you
16 just described?

17 A. About three days.

18 Q. Who was the call from?

19 A. Misti.

20 Q. What did Misti say in that
21 call?

22 A. She asked me if I could come
23 in for another interview and that she

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1 wanted, you know, to see if I still
2 wanted the job and to just come down.

3 Q. When you say another
4 interview, had you already had an
5 interview?

6 A. No.

7 Q. Anything else you recall her
8 saying in that conversation?

9 A. No.

10 Q. When did she tell you to
11 come down?

12 A. Three days after I filled
13 out the application.

14 Q. What did you do next after
15 that?

16 A. Well, she told me come the
17 next day. So the next day I went back
18 down to SMART.

19 Q. Who did you talk to when you
20 got there?

21 A. Misti Dicks.

22 Q. She was working at the front
23 desk when you walked in the facility; is

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1 that correct?

2 A. Yes.

3 Q. Was she wearing a uniform of
4 any kind?

5 A. Yes.

6 Q. Do you recall what that
7 uniform said?

8 A. It was just a blue
9 uniform.

10 Q. Did it have any writing on
11 it?

12 A. No.

13 Q. When you talked to Misti,
14 what did she tell you to do?

15 A. She was just -- she was
16 going over about, you know, about how,
17 you know, it's only for the weekend, how
18 much they pay an hour, and basically
19 everything I have to do.

20 Q. What was everything you had
21 to do?

22 A. Well, at the time when I got
23 hired, the only thing we had to do was

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1 like make sure, you know, check all the
2 exit doors and just walk the plant, you
3 know, just make sure stuff is out of the
4 way and stuff like that.

5 Q. Check the exit doors, walk
6 the plant. When you say make sure stuff
7 was out of the way, what do you mean by
8 that?

9 A. Like equipment, make sure
10 they're not blocking the exits.

11 Q. After she told you that,
12 what happened?

13 A. I took the job.

14 Q. So did she offer the job to
15 you?

16 A. Yes.

17 Q. Did you talk with anybody
18 else before she offered the job to
19 you?

20 A. No.

21 Q. Was anybody else present in
22 the room that you recall when you had
23 this conversation with Ms. Dicks?

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1 A. No.

2 Q. Did this occur around
3 October of 2005?

4 A. I don't remember.

5 Q. Do you recall what she said
6 to you when she offered you the job?

7 A. Basically, does it sound
8 like something I want to do or do I want
9 the job is all.

10 Q. And you said yes?

11 A. Yes.

12 Q. What happened next?

13 A. Nothing. She gave me my
14 uniform.

15 Q. And it's a blue uniform?

16 A. Yes.

17 Q. No writing on it?

18 A. None that I remember.

19 Q. Did they already have a size
20 for you or is it one size fits all?

21 A. No. She had to find my
22 size.

23 Q. Do you know where she went

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1 to look for your size?

2 A. No.

3 Q. Were you with her when she
4 did that?

5 A. No.

6 Q. After she gave you the
7 uniform, what happened next?

8 A. I went home.

9 Q. Did she tell you when to
10 report for the facility next?

11 A. Yes.

12 Q. When did she say?

13 A. At eight.

14 Q. Eight the next morning?

15 A. No, it wasn't the next
16 morning. I don't think -- well, I'm not
17 sure but I don't think it was eight the
18 next morning because I was only working
19 weekends.

20 Q. Do you recall what day of
21 the week this occurred?

22 A. No.

23 Q. So was it eight the next

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1 Saturday?

2 A. No. It was that
3 following -- that following Saturday.

4 Q. So a week from the next
5 Saturday; is that correct?

6 A. It happened -- I went to her
7 during that week and that weekend is
8 when I started.

9 Q. So the first Saturday after
10 you --

11 A. Yes.

12 Q. -- went there? She told you
13 to report at 8 a.m.?

14 A. Yes.

15 Q. Where were you to report?

16 A. The guard shack.

17 Q. Where is the guard shack?

18 A. It sits like close -- it's
19 not near the road but it like sit close
20 down below SMART, in front of SMART.

21 Q. How far would you say is it
22 from the primary facility?

23 A. I have no idea.

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1 Q. Is it more than a football
2 field?

3 A. I wouldn't say that. I
4 don't think it's that far.

5 Q. That's the first thing you
6 drive upon when you drive into the
7 facility?

8 A. Yes.

9 Q. Had you been to the guard
10 shack before you arrived at 8 a.m.?

11 A. No.

12 Q. What happened when you
13 arrived at 8 a.m. at the guard shack
14 that Saturday?

15 A. Basically, I had someone
16 there to train me for my shift.

17 Q. Who was there to train
18 you?

19 A. Stan Adair.

20 Q. Was there anybody else at
21 the guard shack besides Stan?

22 A. No.

23 Q. It was just you and he?

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1 A. Yes.

2 Q. Did he tell you anything
3 about the job before he started training
4 you?

5 A. No.

6 Q. Did you fill out any
7 paperwork?

8 A. Yes. I filled out stuff for
9 as far as like my thing for my taxes and
10 stuff like that.

11 Q. So you filled out your
12 paperwork for your taxes. Do you recall
13 any other paperwork you filled out that
14 morning?

15 A. Just the regular basic
16 employment papers, you know, like stuff
17 like that and had papers to sign, you
18 know, for SMART safety or whatever.

19 Q. Did Stan give you all those
20 papers?

21 A. I got them from Misti.

22 Q. Misti was there too that
23 morning?

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1 A. No, she was not there that
2 morning.

3 Q. She gave them to you --

4 A. She didn't give them
5 directly to me but they came from up
6 there in the -- how am I going to say
7 this -- inside of SMART, behind the
8 desk.

9 Q. The receptionist's desk?

10 A. Yes. She works up that way
11 and I guess she left them for me when
12 I -- so I could have them when I came to
13 work Saturday.

14 Q. When you came to work
15 Saturday, you met Mr. Adair at the
16 security guard shack?

17 A. Yes.

18 Q. Did you sign the papers then
19 or did you --

20 A. I didn't have to. No, I
21 didn't. I didn't sign them directly
22 that day.

23 Q. You didn't sign the papers

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1 that day?

2 A. No.

3 Q. So when you met Mr. Adair,
4 you said he was there to train you.
5 What all did he do to train you?

6 A. He showed me that everything
7 that I was supposed to do as far as
8 being a guard: Check parking lots, walk
9 the plant, make sure the exit doors, you
10 know, are not -- make sure they're
11 closed, make sure there's nothing
12 blocking the exit doors, make sure fire
13 extinguishers work.

14 Q. He said check the parking
15 lot, walk the exit, check the exit
16 doors, make sure fire extinguishers
17 work. Anything else he told you?

18 A. No. Just basically, you
19 know, just keep a lookout on who comes
20 in, who goes out.

21 Q. Any other training he
22 provided you that day?

23 A. No. How to -- yes, how to

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1 answer phone.

2 Q. How did he tell you how to
3 answer the phones?

4 A. Just basically just showing
5 me how to -- when calls come in, what to
6 press and how to take call-ins, just --

7 Q. These were calls coming into
8 the security office?

9 A. Well, the calls -- mainly on
10 the weekend, the calls were coming into
11 the security office anyway like for
12 people calling off for the plant, come
13 through security guard shack.

14 Q. Any other training he
15 provided you?

16 A. No.

17 Q. Did he give you any
18 paperwork that day?

19 A. No.

20 Q. Did you follow him around as
21 he was doing the duties that day?

22 A. Yes.

23 Q. Is that what you did for the

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1 whole day?

2 A. Yes, for that day, I did.

3 Q. And he would explain to you
4 what you needed to be doing as he was
5 doing it?

6 A. Yes.

7 Q. Did he give you any policies
8 or anything like that?

9 A. No.

10 Q. Did you watch any videos or
11 training programs?

12 A. No.

13 Q. Were there any other
14 security officers who worked there that
15 day?

16 A. No.

17 Q. Did Mr. Adair tell you his
18 position?

19 A. He was more like a
20 supervisor.

21 Q. So he was in a position
22 above the level of security officer --

23 A. Yeah.

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1 Q. -- supervisory position?

2 A. Yeah.

3 Q. Do you know what company he
4 was employed by?

5 A. Not -- no.

6 Q. Anything else you remember
7 you did on that first day?

8 A. That's basically it.

9 Q. How long after that first
10 day did you receive this paperwork that
11 Misti left for you?

12 A. I filled it out that
13 Sunday.

14 Q. Your second day?

15 A. Yes.

16 Q. And can you describe how you
17 received that paperwork to fill out?

18 A. It was just laying on the
19 desk when I got to the guard shack.

20 Q. So you went to the guard
21 shack and there was paperwork laying on
22 the desk?

23 A. Yes, in a manila folder with

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1 my name on it.

2 Q. Did anybody tell you to fill
3 it out or --

4 A. I just knew to.

5 Q. You said there was tax
6 paperwork, safety document. Anything
7 else you remember that was in that
8 manila folder?

9 A. I really -- I don't remember
10 what all was in there.

11 Q. On that second day, do you
12 remember who all was working out of the
13 security shack?

14 A. No, I don't remember.

15 Q. Do you remember was Stan
16 there?

17 A. No, Stan wasn't there.

18 Q. Did you receive any more
19 training in the second day?

20 A. No.

21 Q. Did you follow anybody
22 around or did you --

23 A. No.

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1 Q. -- just do the duties
2 yourself?

3 A. Myself.

4 Q. When you were a security
5 officer, were you required to do
6 training every month of any sort?

7 A. No.

8 Q. Did you ever have any
9 training after that first day?

10 A. No.

11 Q. What other security officers
12 worked on the weekend?

13 A. It was like a -- different
14 people, you know, but I always worked in
15 the morning time. But it was different
16 people, you know, that relieved me from
17 my shift.

18 Q. What was your shift in the
19 morning on the weekends?

20 A. Eight to five.

21 Q. And there was three shifts
22 of security officers; is that correct?

23 A. Yes.

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1 Q. Did anybody work with you on
2 your eight to five weekend shift when
3 you first started?

4 A. No.

5 Q. So it was just you when you
6 first started?

7 A. Yes.

8 Q. Later on in your employment,
9 did you share the shift with anybody?

10 A. Not the weekend shift. I
11 didn't work the weekends anymore. I
12 moved to weekdays.

13 Q. How long after your first
14 day did you meet Cliff Eisenberger?

15 A. The following week.

16 Q. Did he usually come in on
17 weekdays in the morning?

18 A. I don't remember.

19 Q. Around how often would he
20 come in during the week while you were
21 working?

22 A. Like every other week.

23 Q. After you worked that Sunday

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1 of the first weekend, was the next time
2 you worked the next weekend or did you
3 work any during that week, do you
4 recall?

5 A. Was -- did I work any --

6 Q. Like during the weekdays or
7 was the next time you worked was the
8 next weekend?

9 A. No, it was next weekend.

10 Q. How long did you just work
11 weekends?

12 A. I think I worked weekends
13 about -- I'd say -- I'm not sure. I
14 don't know. I don't know.

15 Q. We may have gone over this
16 already, but did your employment as a
17 security officer begin in October of
18 '05?

19 A. I'm not sure when it
20 began.

21 Q. Was it in the fall of '05 or
22 the winter of '05?

23 A. I don't remember.

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1 Q. Around how many months did
2 you work as a security officer?

3 A. I would say -- I'm not sure.
4 It's been a while. I don't know.

5 Q. Was it more than six
6 months?

7 A. I don't know.

8 MR. HORSLEY: Can I take a
9 bathroom break?

10 MR. FLOWERS: Yes.

11

12 (A brief recess was taken.)

13

14 Q. (By Mr. Flowers) Do you
15 recall around how many months you just
16 worked weekends?

17 A. No.

18 Q. How did you know when you
19 were scheduled to work?

20 A. They had a sheet saying with
21 our names and what days we work.

22

23 (Defendant's Exhibit No. 1 was

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1 marked for identification and
2 attached hereto.)

3
4 Q. I've marked a document as
5 Defendant's Exhibit 1. Will you review
6 this document and let me know when
7 you've had the chance to review it.
8 It's actually two documents, two pages.

9 MR. HORSLEY: You looked at
10 it?

11 A. Uh-huh (affirmative
12 response).

13 Q. Do you recognize the two
14 documents that are Defendant's Exhibit
15 1?

16 A. Yes.

17 Q. Are these the schedules that
18 you were talking about that notified you
19 when you were to work?

20 A. Yes.

21 Q. And these are just two
22 examples of two weeks; correct?

23 A. Yes.

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1 Q. Do you recall when these
2 schedules would first be posted?

3 A. No.

4 Q. Were they posted in the
5 security shack?

6 A. Not that I remember.

7 Q. Where were they posted?

8 A. I'm not sure. I'm not
9 sure.

10 Q. But they may have been
11 posted in the security shack?

12 A. They may have. I don't
13 know.

14 Q. Did you ever have any
15 problems with shifts you were scheduled
16 for?

17 A. No.

18 Q. Did you ever have to ask
19 anybody questions about the shifts you
20 were to work?

21 A. No.

22 Q. Do you know who you would
23 have called if you had a problem with

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1 your scheduling?

2 A. With the scheduling you mean
3 as far as days I had to work?

4 Q. Uh-huh (affirmative
5 response).

6 A. No.

7 Q. Do you know who made the
8 schedule?

9 A. Misti.

10 Q. Misti made the schedule?

11 A. Yes.

12 Q. Do you know what Misti's
13 position was?

14 A. Guard slash receptionist.

15 Q. Is that what you're just
16 guessing or did she tell you that?

17 A. I'm saying that because
18 she -- either -- she never -- she wore
19 the uniform. She was a guard, but she
20 spent most of her time inside of SMART
21 answering phones.

22 Q. Did anybody ever tell you
23 what her position title was?

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1 A. No.

2 Q. Now, on the bottom of the
3 first page of Defendant's Exhibit 1,
4 there are three phone numbers for Cliff
5 Eisenberger; correct?

6 A. Yes.

7 Q. Do you know what Cliff
8 Eisenberger's position was?

9 A. I don't know just exactly
10 what his position was, no, I don't. I
11 knew he was over us but I didn't know
12 exactly what his position was.

13 Q. So he was up the chain of
14 authority as far as security guards
15 go?

16 A. Yes.

17 Q. Do you know if he was the
18 owner of ADI?

19 A. The owner of ADI?

20 Q. (Nodded head affirmatively.)

21 A. I don't -- I'm not going to
22 say owner, but I mean, he might have
23 been the owner. I'm not sure. I'm

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1 thinking that ADI was part of SMART.

2 Q. What makes you think that
3 ADI was part of SMART?

4 A. Because that's who I was
5 working for was SMART.

6 Q. How do you know you were
7 working for SMART?

8 A. How do I know, because when
9 I started working, you know, if they --
10 we mainly was not told, you know,
11 anything. All I know is that when I
12 started working there, we had to answer
13 to safety at SMART. So that's how I
14 felt that we was working for SMART
15 because anything we do we had to go
16 through SMART's people.

17 Q. Any other reasons that you
18 feel you were employed by SMART?

19 A. I mean, when we picked up
20 our checks, we had to go inside of SMART
21 to pick them up.

22 Q. Where did you go to pick up
23 your checks?

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1 A. The lobby.

2 Q. Who gave you your checks?

3 A. The receptionist, Misti.

4 Q. Do you know who Misti was
5 employed by?

6 A. I felt like we all was
7 employed by SMART.

8 Q. Did anybody ever tell you
9 who Misti was employed by?

10 A. No.

11 Q. Did anybody tell you that
12 ADI was a part of SMART?

13 A. No.

14 Q. In Defendant's Exhibit 1,
15 and you can't really see all the image,
16 but does it look like ADI is at the top
17 of your schedule?

18 A. Yes.

19 Q. And that's just below
20 subject to change per Cliff Eisenberger;
21 is that correct?

22 A. Yes.

23 Q. Did the schedules for

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1 security officers look like the two
2 pages in Defendant's Exhibit 1
3 throughout your employment?

4 A. Did they look like this?

5 Q. (Nodded head affirmatively.)

6 A. No, they changed.

7 Q. How did they change?

8 A. I mean, the whole concept
9 the way they was made out, she made a
10 new layout. It wasn't all like that.

11 Q. So the layout changed?

12 A. Yes.

13 Q. Did they basically have the
14 same information?

15 A. Yes.

16 Q. Do you know if Misti was the
17 one who changed the layout?

18 A. Yes.

19 Q. Did you see her do it?

20 A. No.

21 Q. Did she tell you she did
22 it?

23 A. No.

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1 Q. How do you know she was the
2 one that changed the layout?

3 A. Because Misti, basically
4 Misti did everything, you know, as far
5 as, you know, schedule making and stuff.
6 She basically did everything.

7 Q. Did she work every weekday
8 for the most part?

9 A. Yes.

10 Q. She ever work on weekends?

11 A. Not to my knowledge.

12 Q. The workers who worked
13 inside the SMART production floor, did
14 they wear uniforms?

15 A. No.

16 Q. They didn't wear uniforms?

17 A. No.

18 Q. Do you know if ADI had
19 security officers that worked in any
20 other facilities other than SMART?

21 A. I don't know.

22 Q. Did Stan Adair work most
23 days during the week?

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1 A. Yeah. Yes.

2 Q. Would he work weekdays and
3 weekends or just weekdays or kind of a
4 mix?

5 A. Weekdays.

6 Q. Was he usually there on
7 first shift or was he there on different
8 shifts?

9 A. I don't know.

10 Q. When you were working
11 weekends, would you work both days of
12 the weekend?

13 A. Both days?

14 Q. (Nodded head affirmatively.)

15 A. Uh-huh (affirmative
16 response). Yes.

17 Q. When you started working
18 during the week some, how many shifts
19 would you typically work a week?

20 A. Just two shifts.

21 Q. Just two shifts a week. So
22 were you two shifts a week throughout
23 your employment as a security officer?

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1 A. No. Just when I was working
2 weekends.

3 Q. When you were working
4 weekends, you worked two shifts?

5 A. Yes.

6 Q. When you started working
7 weeks during weekdays -- let me start
8 over.

9 When you started working
10 weekdays, how many shifts would you
11 typically work?

12 A. Three to four.

13 Q. Would any of those shifts be
14 on weekends at that time?

15 A. No.

16 Q. Who told you that you were
17 moving to weekdays?

18 A. Stan.

19 Q. Did you ask to be moved to
20 weekdays or did he just tell you?

21 A. I asked.

22 Q. What was the reason you
23 wanted to move to weekdays?

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1 A. Wanted more hours.

2 Q. Could you work weekdays and
3 not interfere with school or did you
4 have to work around your school
5 schedule?

6 A. It didn't interfere.

7 Q. Would you give anyone your
8 school schedule so it wouldn't
9 interfere?

10 A. I don't understand the
11 question.

12 Q. Did you have classes
13 scheduled during the week during the
14 time you were working weekdays?

15 A. My hours varied because when
16 I started school, you know, some days --
17 like some days I went to school, some
18 days I didn't.

19 Q. Did you give anybody like
20 Stan or anyone else your school
21 schedule?

22 A. No.

23 Q. Did they ever schedule you

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1 to work shifts that interfered with any
2 of your classes?

3 A. No.

4 Q. You described earlier the
5 duties that Stan Adair described to you
6 about the security officer job.

7 A. Uh-huh (affirmative
8 response).

9 Q. Did those duties change at
10 all during the time of your employment
11 as a security officer?

12 A. The only thing changed is
13 when they had put up -- it's like this
14 chain that you let up and let down. At
15 the time when I first started, we wasn't
16 checking badges but then we had to
17 start -- had to check badges when people
18 came in.

19 Q. The chain was out by the
20 security shack?

21 A. Uh-huh (affirmative
22 response). Yes.

23 Q. The guard shack?

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1 A. Yes.

2 Q. And you would check the
3 badge at the guard shack?

4 A. Yes.

5 Q. I guess for visitors you
6 would check their ID?

7 A. We would have to give them a
8 visitor badge.

9 Q. Were there written rules as
10 to how to handle this checking of badges
11 or giving a visitor's pass?

12 A. Mainly everything -- since I
13 was there, everything mainly that SMART
14 wanted us to do, we was basically told.
15 There was no written nothing.

16 Q. Who told you how to check
17 badges?

18 A. Stan.

19 Q. And he told you about giving
20 out visitor badges as well?

21 A. Yes, told all the guards.

22 Q. Did any new security
23 officers start during the time that you

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1 were employed as a security officer?

2 A. Yes.

3 Q. Did they go through the same
4 training you did?

5 A. Yes.

6 Q. Did Stan do that?

7 A. Yes.

8 Q. Were any security officers
9 fired during the time that you were a
10 security officer?

11 A. No.

12 Q. Do you know if any security
13 officers were promoted?

14 A. No.

15 Q. Do you know if any of their
16 pay was changed?

17 A. No.

18 Q. Or any security officers
19 were written up during the time you were
20 employed as a security officer?

21 A. I don't know.

22 Q. You don't know of anybody
23 who was written up?

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1 A. Huh-uh (negative
2 response).

3 Q. Do you know who made the
4 decision to hire you as a security
5 officer?

6 A. No.

7 Q. Do you know who made the
8 decision to hire other security
9 officers?

10 A. (Shook head negatively.)

11 Q. Do you know who all took a
12 role in scheduling the security officers
13 to work a schedule during the week?

14 A. No, I don't.

15 Q. Do you know of anybody who
16 had a role in that besides Misti?

17 A. Cliff.

18 Q. Cliff Eisenberger?

19 A. Yes.

20 Q. Anybody besides Cliff
21 Eisenberger or Misti?

22 A. I don't know.

23 Q. Who was Clifford

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1 Eisenberger, is that somebody different
2 than Cliff Eisenberger?

3 A. That's his son.

4 Q. Do you know what his son's
5 role was?

6 A. I never meet his son.

7 Q. So his son didn't come to
8 the facility very often?

9 A. Not the days I worked.

10 Q. Do you know what Alany
11 Divisions is, A-L-A-N-Y?

12 A. No.

13 Q. Did you ever see that name
14 while you were a security officer?

15 A. No.

16

17 (Defendant's Exhibit No. 2 was
18 marked for identification and
19 attached hereto.)

20

21 Q. I'm marking a document as
22 Defendant's Exhibit 2. Will you review
23 this document and let me know when

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1 you've had a chance to review it.

2 A. (Reviewed document.)

3 MR. HORSLEY: Just tell him
4 when you've looked at it.

5 A. I've looked at it.

6 Q. Have you ever seen the
7 document marked as Defendant's Exhibit 2
8 before?

9 A. Yes.

10 Q. What is this document?

11 A. This is a check stub.

12 Q. So this is a check stub, is
13 it for you?

14 A. Yes, it is.

15 Q. Would you receive check
16 stubs like this when you were employed
17 as a security officer?

18 A. I can't recall how they
19 looked.

20 Q. So you don't remember if
21 they looked like this or similar to
22 this?

23 A. I don't -- I don't

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1 remember.

2 Q. Did the check stubs you
3 receive have SMART written on it
4 anywhere?

5 A. Not that -- not that I
6 recall.

7 Q. Do you recall if they had
8 ADI written anywhere on them?

9 A. I don't -- I can't recall
10 what was on it.

11 Q. Do you see on the top of
12 Defendant's Exhibit 2 where it has Alany
13 Divisions, Inc.?

14 A. Yes, I do.

15 Q. Did you ever know what ADI
16 stood for?

17 A. No.

18 Q. Does Defendant's Exhibit 2
19 reflect the pay you received while you
20 were a security officer to the best of
21 your recollection?

22 A. I don't understand the
23 question.

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1 Q. Does this show all the
2 checks you received while you were a
3 security officer?

4 A. I don't know.

5 Q. You don't recall?

6 A. No.

7 Q. Did you ever receive
8 paychecks from anybody but Misti?

9 A. No.

10 Q. Did they come in an envelope
11 addressed to you or how were they
12 presented when you got them?

13 A. I don't remember.

14 Q. Did you fill out time
15 records while you were a security
16 officer?

17 A. Time records?

18 Q. Was there a time clock or
19 did you write the time you worked?

20 A. Yes, we wrote in what time
21 we came in.

22 Q. Did you write that in the
23 security shack?

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1 A. Yes.

2 Q. And it was just the security
3 officers that would write the time they
4 came in in the guard shack?

5 A. Yes.

6 Q. Do you know how the time was
7 kept of employees who worked out on the
8 SMART production floor?

9 A. No.

10 Q. Did you have to have a badge
11 as a security officer?

12 A. What you mean?

13 Q. Was there a special security
14 officer badge like people coming through
15 the checkpoint had badges?

16 A. No.

17 Q. So you didn't have a
18 badge?

19 A. No.

20 Q. Do you know who determined
21 how you were to be paid?

22 A. No.

23 Q. Besides security officers

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1 and visitors, would everybody coming
2 through have a badge?

3 A. Yes.

4 Q. Coming through the security
5 checkpoint; I should have made that
6 question more clear. Everybody coming
7 through the security checkpoint but
8 security officers and visitors would
9 have a badge for the security officer to
10 check?

11 A. Well, they was required by
12 everybody to have.

13 Q. Who else wouldn't have a
14 badge?

15 A. I mean, as far as employees
16 inside the plant, you know, it was like
17 people coming through, you know, they
18 didn't have their badge but they still
19 came through, you know.

20 Q. The employees working on the
21 production floor and inside the plant,
22 they had badges; right?

23 A. Yes.

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1 Q. Visitors would not have a
2 badge so you gave them one; correct?

3 A. Right. Correct.

4 Q. Did anybody work out of the
5 guard shack other than the security
6 officers?

7 A. No.

8 Q. Stan, I guess, did too.
9 Stan Adair did too. And he was like you
10 said a security officer supervisor?

11 A. Something like that.

12 Q. Something in a position
13 higher than the other security
14 officers?

15 A. Yes.

16 Q. In performing your duties as
17 a security officer, you would either be
18 in the guard shack or walking around the
19 parking lot or the exit doors?

20 A. Yes.

21 Q. Did you ever work at the
22 receptionist's desk?

23 A. Yes.

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1 Q. How often did you do that?

2 A. Only when Misti wasn't
3 available.

4 Q. Any idea of how many times
5 that happened?

6 A. No.

7 Q. How did you know that you
8 were supposed to work at the
9 receptionist's desk?

10 A. When I get to work.

11 Q. Who would tell you?

12 A. Stan.

13 Q. So the duties of security
14 officers involved being in the guard
15 shack, checking people as they come in,
16 walking around the facility and the
17 parking lot as you described earlier,
18 and working at the receptionist's
19 desk?

20 A. And the plant.

21 Q. Walking around the plant.

22 A. Checking exit doors, fire
23 extinguishers, stuff like that.

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1 Q. Was there anything else that
2 security officers did?

3 A. No.

4 Q. Do you recall receiving any
5 policies while you were a security
6 officer?

7 A. I mean, no.

8 Q. Did you ever receive
9 anything like a handbook?

10 A. No.

11 Q. Did you ever receive a
12 complaint procedure of any sort?

13 A. Basically, everything that
14 went on that we was supposed to know we
15 were -- we wasn't given any handbooks or
16 anything. It was just basically handed
17 down from, you know, SMART to us. The
18 dos and the don'ts.

19 Q. What dos and the don'ts are
20 you talking about?

21 A. I'm not -- I don't really
22 remember everything they had required
23 from us. But you know, stuff like, you

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1 know, we have to be, you know, we have
2 to work, you know, stay busy and company
3 policy like no -- well, from what we was
4 told, no dating, you know, like
5 coworkers and stuff like that.

6 Q. Do you recall who told you
7 there was no dating coworkers?

8 A. No.

9 Q. As a security officer, were
10 you ever supposed to go into the office
11 area of the SMART facility?

12 A. Basically, the only time is
13 like when like mail, you know, take them
14 their mail, something like that.

15 Q. But otherwise you were
16 supposed to stay out of the office
17 facility?

18 A. No, we wasn't required to
19 stay out of the office facility. We
20 have to walk through that also.

21 Q. Did you have a breakroom
22 that you used as a security officer?

23 A. Basically, everybody ate in

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1 the guard shack.

2 Q. Did you have any reasons in
3 your responsibilities as a security
4 officer to go into the safety office?

5 A. Unless -- no, not unless
6 something happened.

7 Q. What do you mean unless
8 something happened?

9 A. Like as far as like if
10 something happened at the plant like
11 maybe someone get hurt, or you know, we
12 know something -- we know an incident
13 that happen, you know, at SMART, we
14 have -- we was told we have to notify
15 the safety department.

16 Q. Who told you you were
17 supposed to notify the safety
18 department?

19 A. Stan.

20 Q. Did anybody ever tell you
21 what you should do if you had a problem
22 while working as a security officer?

23 A. No.

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1

2

(Defendant's Exhibit No. 3 was
marked for identification and
attached hereto.)

3

4

5

6

7

8

9

Q. I'm marking a document as
Defendant's Exhibit 3. Will you review
this document and let me know when
you've had a chance to review it.

10

A. (Reviewed document.)

11

12

Q. You recognize Defendant's
Exhibit 3?

13

A. Yes.

14

15

Q. Is this the complaint you
filed in this action?

16

A. Yes.

17

18

19

Q. In this complaint, you're
alleging that you were sexually harassed
by Rance Maddox; is that correct?

20

A. Yes.

21

22

Q. Who was Rance Maddox -- who
is Rance Maddox?

23

A. He was a safety manager.

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1 Q. SMART safety manager?

2 A. Yes.

3 Q. When did you first meet
4 Mr. Maddox, do you recall?

5 A. I don't know.

6 Q. Was it soon after you
7 started your employment, was it a few
8 weeks, months?

9 A. I don't know.

10 Q. Did Mr. Maddox work out of
11 the safety office?

12 A. Yes.

13 Q. Did anybody ever tell you
14 that he was your supervisor?

15 A. We was told -- no, no.

16 Q. And now will you describe
17 for me every way in which you allege
18 Rance Maddox sexually harassed you?

19 A. You want me to describe what
20 happened?

21 Q. Yes, just everything you're
22 saying happened that is sexual
23 harassment.

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1 A. Well, on the day of January
2 28, 2006, we got a call from Cliff
3 Eisenberger. Me and Deana Shelburne, we
4 was on duty together that day. And
5 he -- we -- he said I was trying to get
6 in touch with Rance due to the fact that
7 something happened at the plant.
8 Because everything we basically did, you
9 know, we have to notify Rance of
10 everything. And he must have knew about
11 something that happened that we didn't
12 know about so he wanted us to get in
13 touch with Rance.

14 So we tried calling the
15 office; he wasn't answering the phone.
16 So we seen him in the parking lot at his
17 car. So he come -- you know, we goes up
18 to him and tell him that Cliff is trying
19 to get in touch for him -- touch with
20 him, you know, about an incident that
21 happened and he was on the phone. So he
22 decided to walk back to the guard shack
23 with us since he was closer to the guard

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1 shack anyway. So he decided to walk
2 back to the guard shack with us and
3 answer Cliff's call. So he was on the
4 phone with Cliff and me and Deana was
5 still in the guard shack. So it was
6 Deana's turn to go make rounds inside
7 the plant while I check badges. So that
8 left me and Rance inside the guard
9 shack. He talked to Cliff for a while,
10 then after that, he hung up the phone
11 and then he started asking me personal
12 questions about myself. And then I
13 felt --

14 Q. What all did he ask you?

15 A. What all did he ask me, he
16 was asking me stuff like, you know, will
17 I go out with him. He asked me, you
18 know, will I sleep with him and I was
19 like no, I'm a married woman. And he
20 was like, well, I'm going through a
21 divorce and stuff, you know. And then
22 he started by touching me on my arm like
23 rubbing me on my arm (indicated) and I

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1 told him not to touch me because I'm
2 married. So I moved and go over -- I
3 was standing right there by the door so
4 I moved and go over there by where the
5 chair and the little desk and everything
6 was. And I started -- I was writing
7 over there and he came behind me and
8 started rubbing me like on my legs like
9 below my waist moving closer to the
10 front. And then I told him, don't touch
11 me, and I went, you know, to get away
12 from him and I turned around and he
13 grabbed me and pulled me to him and
14 kissed me.

15 Q. What happened next?

16 A. I told him that I was going
17 to report him and he told me wouldn't
18 nobody believe me anyway.

19 Q. Did you back away from
20 him?

21 A. I pushed him -- I pushed him
22 off me.

23 Q. Did he go to the ground or

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1 did he --

2 A. No, it wasn't that hard.

3 Q. Did he leave after that or
4 did anything else happen?

5 A. Well, he was -- he had
6 stayed there for a while until he saw
7 Deana coming from the plant. He seen
8 Deana coming from the plant and then
9 that's when he decided to leave.

10 Q. What happened in between the
11 time you pushed him away and he saw
12 Deana coming and left?

13 A. That's -- that was during
14 the time he was telling me -- I was
15 telling him that I'm going to report him
16 because, you know, I feel like he
17 violated me and he was wrong for doing
18 what he did. He was telling me won't
19 nobody believe me anyway because I'm
20 just a guard.

21 Q. Was there anything else said
22 between the two of you during that
23 time?

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1 A. No.

2 Q. How long passed between the
3 time you pushed him away and the time
4 that he saw Deana approaching and
5 left?

6 A. It was just like a split
7 second because by the time I pushed him,
8 you know, pushed him off me, Deana was
9 walking out the front door then.

10 Q. So he left. Did Deana come
11 in the guard shack?

12 A. Yes.

13 Q. When -- after he first got
14 off the phone, did he just start asking
15 you if you would go out with him or was
16 there any conversation before that?

17 A. Basically, when he got off
18 the phone, he -- only thing he really
19 said to me was so how have you been
20 doing. And I was like fine. Then
21 that's when he asked me will I go out
22 with him. I was like no.

23 Q. How long passed between the

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1 time that he got off the phone and you
2 pushing him away?

3 A. I don't know.

4 Q. Was it minutes, was it 15
5 minutes or was it -- just any estimate
6 as to how long it was?

7 A. I don't know.

8 Q. Is there anything else that
9 you remember him saying to you in that
10 time?

11 A. Last thing I remember him
12 saying no one going to believe you
13 because you're just a guard.

14 Q. What about before he started
15 rubbing you, do you remember him saying
16 anything else to you?

17 A. No.

18 Q. Do you recall saying
19 anything else to him other than what
20 you've told me?

21 A. No.

22 Q. Did he ever do anything you
23 consider to be sexual harassment other

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1 than that incident in the guard shack?

2 A. No.

3 Q. When Deana was approaching
4 and he left, what happened next?

5 A. She came in.

6 Q. Did you talk with her about
7 this?

8 A. Yes.

9 Q. What all did you say?

10 A. I just basically told her
11 everything that happened.

12 Q. What was her response?

13 A. That I should report him.

14 Q. How long did you speak with
15 Deana?

16 A. Well, me and Deana worked
17 all that day together, you know, because
18 we was on the same shift.

19 Q. Did you just continue
20 working that day?

21 A. Yes, I did.

22 Q. Do you recall what day of
23 the week this was?

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1 A. I don't know. All I know it
2 was the 28th.

3 Q. Looking back on Defendant's
4 Exhibit 1, the first page, now, it looks
5 like January the 28th of 2006 is a
6 Saturday; is that right?

7 A. Uh-huh (affirmative
8 response).

9 Q. And it has you and Deana
10 Shelburne working the morning shift?

11 A. Uh-huh (affirmative
12 response).

13 MR. HORSLEY: Say yes.

14 A. Yes.

15 Q. Did you -- does that sound
16 right, did that happen on a Saturday?

17 A. Yes.

18 Q. Do you recall what time
19 during your shift the incident with
20 Rance occurred?

21 A. It was approximately between
22 11:15 and 11:45.

23 Q. Did you work the rest of

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1 your shift?

2 A. Yes.

3 Q. Did you see Rance at all the
4 rest of that shift?

5 A. No.

6 Q. Who else did you tell about
7 what happened with Rance other than
8 Deana during that shift?

9 A. I told Cliff.

10 Q. Cliff Eisenberger?

11 A. Yes.

12 Q. How did you tell
13 Mr. Eisenberger?

14 A. I called him.

15 Q. On his cell phone, his home
16 phone?

17 A. I don't know -- I don't know
18 if it's his cell, house. I don't know.

19 Q. How long after the incident
20 did you call him?

21 A. Immediately.

22 Q. After you spoke with Deana
23 or --

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1 A. After I spoke with Deana.

2 Q. Did you call him from the
3 guard shack?

4 A. Yes.

5 Q. What all did you tell him?

6 A. I told him everything that
7 he did.

8 Q. So I mean, do you remember
9 how you described it to him, did you
10 just kind of tell the story from
11 beginning to end or did you just say
12 Rance did this and Rance did that?

13 A. From the beginning to the
14 end.

15 Q. Do you know of any way that
16 you told it differently when you spoke
17 with Mr. Eisenberger than you did
18 today?

19 A. No.

20 Q. What was Mr. Eisenberger's
21 response?

22 A. He told me to write -- to
23 write down exactly what Rance did. He

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1 told me to write it down. And he told
2 me get Deana to write out a statement of
3 what I told her. And he said that he --
4 that he was going to take it to Gary
5 Sport and that he was going to try to
6 get everything resolved.

7 Q. Did you know who Gary Sport
8 was?

9 A. Yes, I did.

10 Q. Who was he at that time?

11 A. I think he was the human
12 resource manager.

13 Q. Do you recall anything else
14 that Cliff told you in that phone
15 conversation?

16 A. That was basically it.

17 Q. Did you say anything after
18 he told you to write the statement down
19 and Deana's statement?

20 A. No.

21 Q. Did you write out a
22 statement?

23 A. Yes, I did.

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1 Q. Did you get Deana to write
2 out a statement?

3 A. Yes, I did.

4
5 (Defendant's Exhibit No. 4 was
6 marked for identification and
7 attached hereto.)
8

9 Q. I marked a document as
10 Defendant's Exhibit 4. This is a
11 document that was produced to me today.
12 Do you recognize the document marked as
13 Defendant's Exhibit 4?

14 A. Yes, I do.

15 Q. Is this the statement that
16 Deana wrote that day on the 28th?

17 A. Yes, it is.

18 Q. Is this the entire statement
19 she wrote?

20 A. Yes.

21 Q. Was there any other document
22 she gave you that day?

23 A. No.

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1 Q. Did you write the statement
2 directly after you spoke with
3 Mr. Eisenberger?

4 A. Yes. After he told me to
5 write the statement, that's when I wrote
6 it.

7 Q. What happened after you
8 wrote the statement, what happened next
9 regarding this incident?

10 A. Nothing happened.

11 Q. Did you give these
12 statements to anybody that day?

13 A. No. He said just put them
14 in the lockbox and I would get them.

15 Q. So there's a lockbox in the
16 security office?

17 A. No. It was inside of
18 SMART.

19 Q. Where was it in SMART?

20 A. Behind the receptionist's
21 desk.

22 Q. Did you have access to that
23 lockbox?

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1 A. Well, if we needed to.

2 Q. How would you get access to
3 it?

4 A. It was certain place they
5 put like the keys. If the guards need
6 to get in there for like safety goggles
7 or something like that, go inside the
8 plant, that we could have access, you
9 know.

10 Q. Where would you get the keys
11 from?

12 A. In the drawer behind the
13 receptionist's desk.

14 Q. Do you recall who was
15 working at the receptionist's desk that
16 day?

17 A. I don't think anybody was
18 behind the receptionist --

19 Q. 'Cause it's Saturday.

20 A. Not on weekends.

21 Q. Right. So nobody works the
22 receptionist's desk.

23 A. Not on weekends.

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1 Q. Had you ever been in the
2 lockbox behind the receptionist's desk
3 before?

4 A. To get a pair of safety
5 goggles or maybe earplugs.

6 Q. Any other reasons?

7 A. No.

8 Q. Was that lockbox just for
9 security officers?

10 A. I don't know. To my
11 knowledge, it was, but I don't know.

12 Q. So after you drafted the
13 statements, you put them into the
14 lockbox behind the receptionist's
15 desk?

16 A. Yes, I did.

17 Q. Did you talk with anybody
18 else that day about the -- about this
19 incident?

20 A. No.

21 Q. Do you recall when the next
22 day was you were scheduled for work?

23 A. I think it was that -- I

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1 don't know if it was -- I don't know.
2 Maybe the next day 'cause I think it
3 happened on a Saturday. I don't know.

4 Q. If you look at the second
5 page of Defendant's Exhibit 1, it has
6 you scheduled for the first shift on
7 Sunday, January 29th; correct?

8 A. I didn't work that day.

9 Q. You didn't work on that
10 Sunday?

11 A. No, I didn't.

12 Q. Do you recall why you didn't
13 work that day?

14 A. Yes. 'Cause I was headed
15 out there -- when I was headed out
16 there, I was told that Cliff, Stan, Gary
17 Sport and Rance had a meeting. And from
18 what I was told that during the meeting
19 it was said that there was nothing could
20 be done to Rance since that was his
21 first time offense. And you know, it
22 was nothing they could do about it. And
23 I felt like if I had to work up under

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1 him by him being the safety manager and
2 I was part of safety, I wasn't going to
3 work there anymore.

4 Q. You said Cliff, Stan, and
5 Gary Sport had this meeting?

6 A. And Rance.

7 Q. But you worked out the
8 remainder of your shift on Saturday,
9 January 28th?

10 A. Yes, I did.

11 Q. Are you sure you got this
12 call about the meeting on Sunday the
13 29th or could it have been Tuesday the
14 31st of January?

15 A. I want to say it was the
16 29th, but then again, it could have been
17 another day. I mean, it's been -- I
18 don't know.

19 Q. Is it possible you might
20 have worked the Sunday after January
21 28th?

22 A. It's possible but I don't
23 know.

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1 Q. On the day that you were
2 driving to the facility and you said you
3 got the phone call, were you working a
4 morning shift or an afternoon or second
5 shift?

6 A. Got what phone call?

7 Q. You just described you were
8 told about a meeting between Cliff
9 Eisenberger --

10 A. They didn't call me. I had
11 got to SMART. They told me directly.

12 Q. Describe for me how that
13 happened.

14 A. Nothing, but I was just
15 approaching inside of SMART fixing
16 getting ready to go to duty.

17 Q. This is you were approaching
18 the inside of SMART or the guard
19 shack?

20 A. Inside of SMART.

21 Q. Go on.

22 A. And I was told that the
23 meeting -- they had a meeting and they

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1 told me that, you know, and the result
2 of the meeting. It was nothing they
3 could do to Rance Maddox as that was his
4 first offense.

5 Q. Who told you this?

6 A. Cliff Eisenberger and Stan
7 Adair.

8 Q. Did they tell you who was in
9 the meeting?

10 A. Yes. It was Cliff, Stan,
11 Rance, Gary Sport, and if I'm not
12 mistaken, I think there were a few more
13 people up there. I'm not sure. But I
14 know those four was there.

15 Q. What happened after you were
16 told this by Cliff Eisenberger and Stan
17 Adair?

18 A. I left.

19 Q. You left immediately?

20 A. Yes.

21 Q. Left the facility?

22 A. Yes, I did.

23 Q. Did you return to the

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1 facility that day?

2 A. No.

3 Q. Did you say anything in
4 response after Cliff Eisenberger and
5 Stan Adair told you that?

6 A. Did I say anything?

7 Q. Uh-huh (affirmative
8 response).

9 A. Yes.

10 Q. What did you say?

11 A. I said that I'm not going --
12 I'm not going to work under Rance, you
13 know. He's safety manager. We're part
14 of safety, and if I've got to continue
15 to work under him, I'm not going to work
16 here.

17 Q. Anything else you said?

18 A. No.

19 Q. Do you recall either
20 Mr. Eisenberger or Mr. Adair saying
21 anything else?

22 A. No.

23 Q. Who was doing the talking,

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1 was it Mr. Eisenberger or Mr. Adair?

2 A. I don't know.

3 Q. You don't recall?

4 A. No, I wasn't there.

5 Q. The talking when they told
6 you that nothing was going to be done,
7 was it Mr. Eisenberger or Mr. Adair
8 talking?

9 A. Well, first Stan told me.

10 Q. Stan told you?

11 A. Yes. Then Cliff calls me,
12 you know, 'cause after -- after I left
13 the building, Cliff called me.

14 Q. I must have misunderstood
15 earlier. You were approaching the
16 building, Stan was the one who told you
17 that?

18 A. Yes.

19 Q. He told you that it was the
20 first offense and nothing was going to
21 be done about it?

22 A. Exactly. Said nothing they
23 could do because it was his first

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1 offense.

2 Q. And then after that, that's
3 when you said that I'm not going to work
4 under Rance, that's when you made that
5 comment?

6 A. Right.

7 Q. So then you leave; is that
8 right?

9 A. Yes.

10 Q. Now, when did you talk to
11 Mr. Eisenberger?

12 A. When I got home.

13 Q. Did you see Mr. Eisenberger
14 when you were at the facility that
15 day?

16 A. He had left.

17 Q. So you didn't see him while
18 you were there?

19 A. No.

20 Q. How did it come that you
21 talked to him when you got home?

22 A. He called my house.

23 Q. What did he tell you when he

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1 called your house?

2 A. He asked me why did I leave
3 'cause I suppose -- Stan called him and
4 told him I had left. I was like
5 because, you know, Stan -- I was like
6 Stan told me what they said in the
7 meeting and I feel like, you know, my
8 rights was violated and if there's
9 nothing, you know, they're going to do
10 about it, then I don't need to work
11 here. I don't need to work there.

12 Q. What did Mr. Eisenberger say
13 in response?

14 A. He was like, well, just try
15 to, you know, try to work through it,
16 and you know, just forget about it. I
17 said I'm not going to forget about it.

18 Q. Did he talk about this
19 meeting at all?

20 A. Yes. He told me the same
21 thing that Stan told me.

22 Q. At what point in time in
23 this call did he tell you about the

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1 meeting?

2 A. During, you know, just -- I
3 don't know exactly the direct point, but
4 before he hung up, you know, we did get
5 on the conversation about the meeting
6 that had occurred.

7 Q. Do you recall what he
8 specifically told you about the
9 meeting?

10 A. Yes. He told me that they
11 had a meeting with Gary Sport and they
12 was saying that it was his first offense
13 and there was nothing that they can do.
14 But if it happened again, they could
15 take action then.

16 Q. Anything else you recall
17 Mr. Eisenberger saying in that call?

18 A. No.

19 Q. Did you tell him anything
20 else?

21 A. No.

22 Q. Did you tell him you're not
23 coming back to your employment?

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1 A. Yeah, I had already told him
2 that.

3 Q. The first time you told him
4 that was in that call; correct?

5 A. When I told -- well, when I
6 left, I mean, but when he told me -- I
7 told him that I'm not going to work up
8 under Rance, try to forget about it. I
9 had already told him I wasn't going to
10 do it, wasn't going to work there
11 anymore.

12 Q. The first time you told
13 Mr. Eisenberger that was in the phone
14 call; correct?

15 A. Yes.

16 Q. Did you have any more
17 conversations that day with anybody from
18 ADI or SMART?

19 A. No.

20 Q. Did you ever talk with Gary
21 Sport about what had happened with
22 Rance?

23 A. No.

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1 Q. Did you ever talk with
2 anybody in SMART HR or management about
3 what happened with Rance?

4 A. No.

5 Q. Did you receive any other
6 calls at your house from
7 Mr. Eisenberger?

8 A. No.

9 Q. Did you receive any calls at
10 your house from anybody at SMART?

11 A. No.

12 Q. Did you ever get a call from
13 anybody named Ruth Ryan?

14 A. Ruth Ryan?

15 Q. (Nodded head affirmatively.)

16 A. No.

17 Q. Do you recall what your
18 phone number was at that time, home
19 phone number?

20 A. No, I don't.

21 Q. Did you have an answering
22 machine?

23 A. No.

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1 Q. Have you told me every way
2 in which you're alleging that you were
3 sexually harassed in your complaint
4 against SMART?

5 A. Yes.

6 Q. Do you know if any
7 corrective action was later taken
8 against Mr. Maddox because of what you
9 alleged he did?

10 A. I don't understand.

11 Q. Do you know if anything ever
12 happened to him or he was told anything
13 because of what you allege he did?

14 A. No, 'cause last -- last I
15 heard, you know, after I quit he was
16 still working at SMART.

17 Q. Do you know how long he
18 worked at SMART after you left?

19 A. No, I don't.

20 Q. In your complaint, are you
21 alleging that you were retaliated
22 against by SMART?

23 A. What do you mean?

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1 Q. I'll hold off on that
2 question.

3
4 (Defendant's Exhibit No. 5 was
5 marked for identification and
6 attached hereto.)
7

8 Q. I'm marking a document as
9 Defendant's Exhibit 5. Do you recognize
10 the two-page document marked as
11 Defendant's Exhibit 5?

12 A. Yes.

13 Q. Is this the EEOC charge you
14 filed against SMART?

15 A. Yes.

16 Q. Tell me every way you
17 believe you were forced to resign.

18 A. Well, basically, everything
19 that, you know, if we had to report to
20 anybody, you know, we had to report
21 everything that we see or happen to
22 Rance Maddox because he is the safety
23 manager. And after, you know, he made

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1 those sexual advances towards me and
2 I -- I couldn't have anything done about
3 it and I knew if something else happened
4 at that plant that's the first person I
5 would had to go to was Rance. I
6 couldn't go to Rance because, you know,
7 I had already, you know, you know,
8 made -- wrote a complaint about him, you
9 know, sexual harassment. He knew
10 exactly who the person was. That's why
11 I feel like I was forced to quit because
12 I couldn't work under him knowing that
13 he had did all that to me.

14 Q. Any other reasons you feel
15 you were forced to quit?

16 A. That's it.

17 Q. Now, when you say you
18 were -- you described earlier I believe
19 that you had to report if there were
20 employee injuries or any safety
21 incidents or security incidents that
22 occurred at the facility, you had to
23 report that to the safety department --

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1 A. Uh-huh (affirmative
2 response).

3 Q. -- is that correct?

4 A. Yes.

5 Q. Is that your only -- the
6 only things you would be required to
7 report to the safety department?

8 A. Yes, like if something
9 happens, yes.

10 Q. If something happens?

11 A. Yes.

12 Q. But you didn't regularly
13 report to the safety department unless
14 something happens; right?

15 A. Yes.

16 Q. Meaning -- your yes answer
17 means I did not regularly report to the
18 safety department unless something
19 happens; correct?

20 A. Yes.

21 Q. When something happened, did
22 you ever report to anybody in the safety
23 department other than Rance Maddox?

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1 A. Yes.

2 MR. FLOWERS: Let's take
3 like a five-minute break or so.

4
5 (A brief recess was taken.)

6
7 Q. (By Mr. Flowers) When the
8 incident occurred with Rance in the
9 security shack, the guard shack, you
10 said he rubbed your legs and your
11 shoulders; is that correct?

12 A. My arm.

13 Q. He rubbed your arm?

14 A. Yes.

15 Q. Anywhere else?

16 A. Yes. Right here below my
17 waist like on my legs approaching me in
18 the front (indicated).

19 Q. He rubbed on your legs in
20 the front below your waist?

21 A. Yes.

22 Q. Was he rubbing on top of
23 clothing?

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1 A. Yes.

2 Q. You had your uniform on?

3 A. Yes.

4 Q. Anywhere else that he
5 rubbed?

6 A. No.

7 Q. Besides rubbing you on the
8 arm and the front of the legs and
9 kissing you, did he touch you in any
10 other way?

11 A. No.

12 Q. Where did he kiss you?

13 A. In the mouth.

14 Q. How long did he hold the
15 kiss before you pushed him away?

16 A. I don't know.

17 Q. Now, you had a daily duty
18 report the security officers filled out;
19 correct?

20 A. Yes.

21 Q. What all was reported on
22 that report?

23 A. Basically, every hour, you

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1 know, we write down like we make -- if
2 we making rounds, we write down we made
3 a round, what all we saw inside the
4 plant. And if we're in the guard shack
5 checking badges, we just say check
6 badges.

7 Q. The only thing you had to
8 report directly to the quality
9 department and not just on the duty
10 report were employee injuries or other
11 major incidents; is that correct?

12 A. Yes.

13 Q. How often would you have
14 something that required you to directly
15 report it to the safety department?

16 A. Well, from my understanding,
17 our daily reports were going to the
18 safety manager, so that's really --
19 that's just like reporting.

20 Q. Who did you give the daily
21 report to once you finished it?

22 A. We didn't give them to
23 anybody. We leave them up front on the

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1 receptionist's desk.

2 Q. So at the end of your shift,
3 you leave them on the receptionist's
4 desk?

5 A. Uh-huh (affirmative
6 response).

7 Q. How often would you have to
8 make a report to the safety department
9 other than a duty report?

10 A. No time.

11 Q. Well, there were no other
12 occasions where you had to go to the
13 safety department and tell somebody that
14 somebody was injured or something had
15 happened?

16 A. I mean, when people get
17 hurt, like if there's a fire or that we
18 know about or maybe if somebody get hurt
19 or something like that, then we might go
20 to the safety department.

21 Q. During the time you worked
22 as a security officer, how many times
23 did that happen that you recall?

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1 A. Maybe once or twice.

2 Q. Do you recall what the
3 occasions were that required you to go
4 report to the safety department?

5 A. No. I mean, we've had
6 smoke, I mean, coming from the side of
7 the plant.

8 Q. Was that something you
9 reported?

10 A. No. I reported -- the only
11 thing I reported from there was when I
12 think someone -- someone got hurt from
13 one of the machines.

14 Q. Do you remember how they got
15 hurt?

16 A. No.

17 Q. Who did you report to in the
18 safety department?

19 A. I don't remember who I
20 reported it to. I don't know her
21 name.

22 Q. It's a female in the safety
23 department?

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1 A. Huh?

2 Q. Was it a female in the
3 safety department?

4 A. Yes, it was a female.

5 Q. Around how many people work
6 in the safety department?

7 A. Well, I don't know how many
8 people but I saw three different
9 people.

10 Q. Three different people.
11 Does that include Mr. Maddox?

12 A. Yes.

13 Q. Did Mr. Maddox have his own
14 office separate from the other offices
15 in the safety department?

16 A. No, just one office.

17 Q. Was reporting incidents like
18 you've described the only interaction
19 that you had to have as part of your job
20 with the safety department?

21 A. Yes.

22 Q. Did the safety department
23 employees ever tell you to do things

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1 around the facility directly?

2 A. They have. If there's
3 certain things they wanted us to do.

4 Q. What all did safety
5 department employees tell you to do
6 there while you were employed?

7 A. Well, they'll come tell us
8 like if someone get fired or quit or
9 whatever, something go on, they'll tell
10 us let us -- come to -- certain person
11 not allowed back on the facility. And
12 just -- if -- if there's just
13 something -- was something going on they
14 wanted us to know about or wanted us to
15 do they tell us specifically.

16 Q. So they tell you if somebody
17 wasn't allowed to come back on the
18 facility so you know not to let them in;
19 correct?

20 A. Correct.

21 Q. Are there any other
22 occasions in which somebody with the
23 safety department told you to do

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1 something?

2 A. Just when they started --
3 when they first started to change their
4 little routine about as far as like
5 badges. You're required to have your
6 badge in order to enter SMART, and you
7 know, stuff like that when big major
8 changes going on with the plant, you
9 know, they'll come let us know.

10 Q. But you said earlier that
11 Stan described to you what you had to do
12 with the badges; right?

13 A. Yes. But see, they have to
14 get -- but Stan don't have to get
15 information from safety.

16 Q. They explained to Stan --

17 A. Yes.

18 Q. -- what the changes were?

19 A. Yes.

20 Q. They didn't explain them
21 directly to you?

22 A. No. No.

23 Q. Any other occasions where

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1 they told you what to do that you
2 haven't already described?

3 A. No.

4 Q. Was there any other
5 departments at SMART that would tell you
6 what to do as part of your job?

7 A. No.

8 Q. Did you file for
9 unemployment compensation after you
10 didn't return?

11 A. No.

12 Q. Did you return to work for
13 ADI in March of '06?

14 A. March of '06, I came -- I
15 had went up there and talked about a job
16 but I didn't work there.

17 Q. What did you -- how did you
18 come about to go up there and talk about
19 a job?

20 A. What you mean?

21 Q. You said you went up to talk
22 about a job to --

23 A. About me coming back, but I

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1 never came back.

2 Q. Did they call you to do that
3 or you just go up there on your own?

4 A. Well, I had got a call from
5 Charles. 'Cause see, Charles, even
6 though I didn't work there anymore, I
7 still used to call out there and talk to
8 him.

9 Q. Who is Charles?

10 A. He's also a security guard
11 out there.

12 Q. Do you remember his last
13 name?

14 A. Johnston.

15 Q. You got a call from Charles.
16 What did he say?

17 A. He was like have you
18 considered coming back. I was like no,
19 not really. And then he was just
20 telling me I should 'cause, you know, he
21 felt like I was a good guard and stuff
22 like that, but I wasn't going back.

23 Q. But you went up there to

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1 talk about it?

2 A. Yeah, I went up there to
3 talk about it.

4 Q. Who did you talk about it to
5 when you got there?

6 A. Stan and Misti.

7 Q. If you weren't going back,
8 why did you go up to talk about the
9 job?

10 A. I was considering it, but I
11 didn't do it 'cause once I got there, I
12 started thinking about what that man did
13 to me, you know.

14 Q. Did you know if Mr. Maddox
15 was still employed at that time?

16 A. I didn't know. That's why I
17 didn't take the job because I didn't
18 know.

19 Q. Did either Stan Adair or
20 Misti Dicks offer you the job?

21 A. Yeah. I mean, they asked me
22 if I wanted to come back.

23 Q. You told them no?

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1 A. Yes.

2 Q. Did you tell them anything
3 else?

4 A. Basically, she was like --
5 well, Misti asked me, she was like,
6 would you like to try it out. And I
7 told her, I said, I had told her no.
8 She like -- she just like just try it
9 out and if you don't like it, you know,
10 if you don't feel comfortable, you don't
11 have to come back. And I was like okay.
12 So I had -- Stan asked me -- well, he
13 was like would you try it out at least
14 one day. I said yeah. So I tried it
15 out that day. But as night start to
16 approach, I didn't care for it. And I
17 called Stan in and told him I didn't
18 want to do it, so I left and I haven't
19 been back.

20 Q. Did you discuss with Stan
21 Adair or Misti Dicks anything about
22 Rance Maddox?

23 A. You mean as far as -- what

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1 you mean?

2 Q. Did his name come up?

3 A. Did his name come up, no.

4 Q. How come -- strike that.

5 Why did you not care for it once night
6 started to approach?

7 A. It's just -- just me
8 thinking, you know what I'm saying, I
9 might run into him, you know. 'Cause I
10 didn't want to do it in the first place,
11 but it was just like I did it for them
12 but I didn't want to risk running into
13 him. So that's why I called Stan and
14 told him I wasn't going to do it.

15 Q. Did you tell Stan why you
16 weren't going to do it?

17 A. No. He -- anyway, I felt
18 like he already knew why I didn't want
19 to stay.

20 Q. But you didn't express it to
21 him?

22 A. No.

23 Q. And you don't recall him

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1 mentioning Mr. Maddox's name at all when
2 you were talking to him in March of
3 '06?

4 A. No.

5 Q. So you did work just one day
6 during March of '06?

7 A. Yes.

8 Q. And you were paid for that
9 day?

10 A. Yes.

11 Q. Did you talk to Cliff
12 Eisenberger at all when you returned?

13 A. No. If I'm not mistaken,
14 Stan talked to Cliff, but I don't know
15 what about. It might have been about me
16 trying to come back or whatever. But
17 I'm not sure.

18
19 (Defendant's Exhibit No. 6 was
20 marked for identification and
21 attached hereto.)
22

23 Q. I'm marking this document as

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1 Defendant's Exhibit 6. Have you ever
2 seen the document marked as Defendant's
3 Exhibit 6?

4 A. Have I ever seen it?

5 Q. Uh-huh (affirmative
6 response).

7 A. No.

8 Q. Will you read the first page
9 for me on Defendant's Exhibit 6 and let
10 me know when you're done with it.

11 A. The entire first page?

12 Q. Just the handwritten
13 material on the first page.

14 A. Okay. In reference --

15 Q. You don't have to read it
16 out loud. Just read it to yourself.

17 A. (Complied.)

18 MR. HORSLEY: Did you read
19 the second page too?

20 A. No, just the first one.

21 MR. HORSLEY: Read the
22 second page.

23 Q. Read the second page.

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1 A. (Complied.)

2 Q. Have you finished reading
3 the handwritten material in Defendant's
4 Exhibit 6?

5 A. Yes, I have.

6 Q. Do you agree with
7 Defendant's Exhibit 6, the handwritten
8 material?

9 A. No, I don't.

10 Q. What all is incorrect on
11 Defendant's Exhibit 6?

12 A. Okay. Well, okay, sure
13 enough they did have a meeting with HR
14 and the date is correct. Well, I don't
15 know about the 30th but I know 1/28/06
16 is correct. But -- let me see. He
17 didn't tell me that he was supposed to
18 met with me. Cliff wasn't even there
19 this particular day. He wasn't even
20 there.

21 Q. You didn't see him there or
22 how do you know he wasn't there?

23 A. Because when I reported for

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1 my duty Stan was on duty. Cliff wasn't
2 there. He told me -- Stan had told me
3 they had the meeting and Cliff was not
4 there. So I don't see how he was
5 supposed to meet with me if he wasn't
6 there.

7 Q. Stan told you Cliff wasn't
8 there?

9 A. Yeah. I asked him where
10 Cliff was. He was Cliff, he left for
11 the day. I never even talked to Cliff.
12 Only one I talked to that day was Stan.

13 MR. HORSLEY: Tell him about
14 that page too. He wants you to tell him
15 everything that's incorrect.

16 Q. Yeah, tell me everything
17 that's incorrect.

18 A. Okay. I never -- let me
19 see. I didn't say anything about no
20 store. I told -- what I told Stan was
21 I'm not about to work up under Rance.
22 And they saying there was nothing they
23 can do 'cause see I heard from Stan

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1 first. There was nothing they can do
2 about Rance doing that to me because it
3 was a first time offense. And he said
4 just act like it never happened. I said
5 act like it never happened. I'm not
6 about to work up under him and he's done
7 this to me and then I left. This about
8 the store and all that, that's not true.
9 No one called me and they never said
10 anything about a meeting or anything.
11 'Cause when I was pulling in approaching
12 the job site, he told me right then what
13 happened inside the meeting. So it
14 wasn't they met with me and told me
15 anything. That's just a bunch of lies.

16 Q. Were you checking your cell
17 phone messages at that time?

18 A. I didn't get any messages.

19 Q. But you regularly checked
20 your cell phone messages?

21 A. I always have.

22 Q. Who all had your cell phone
23 number in the guard shack? Did Cliff

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1 have your cell phone number?

2 A. I'm not sure.

3 Q. Do you know who all --

4 A. I mean, it's not like he
5 couldn't got it. But I don't know if he
6 just had it.

7 Q. Do you know who all at the
8 guard shack or the rest of the SMART
9 facility had your cell phone number?

10 A. Just the guards because, you
11 know, in case like some emergency come
12 up, somebody don't show or something, we
13 can look on the thing and just try to
14 get in touch with somebody.

15 Q. Were there documents kept in
16 the lockbox behind the receptionist's
17 desk?

18 A. I don't think it was. I
19 don't know.

20 Q. Do you know if you had a
21 personnel file with ADI?

22 A. No.

23 Q. You don't know if you did or

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1 not?

2 A. No.

3 Q. Do you know if they kept
4 personnel files or documents anywhere in
5 the security shack or anywhere else?

6 A. Personnel?

7 Q. Like a folder with all your
8 information related to your employment.

9 A. I don't know where they kept
10 that.

11 Q. So you don't know where --
12 do you know if there were any documents
13 kept like that in the guard shack?

14 A. I really didn't look to
15 see.

16 Q. You don't know if there was
17 anything behind the receptionist's
18 desk?

19 A. Just the lockbox.

20 Q. Have you ever seen documents
21 related to your employment as a security
22 officer?

23 A. Not I mean -- you mean the

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1 papers I filled out?

2 Q. Like the papers you filled
3 out or --

4 A. Once I filled them out, I
5 haven't never seen them again.

6 Q. Did you give those papers to
7 Stan Adair or to Misti Dicks?

8 A. I gave them back to Misti.

9 Q. You have any idea why your
10 file of papers would be missing from the
11 other files?

12 A. Why would they be missing?

13 Q. (Nodded head affirmatively.)

14 A. No.

15 Q. Did you know Robin Atwell?

16 A. Yes.

17 Q. She worked in the safety
18 office?

19 A. Yes.

20 Q. When was the first time you
21 met her?

22 A. I don't know exactly when I
23 first met her, but I know she was

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1 working in the safety office.

2 Q. Did y'all develop a
3 relationship?

4 A. No, just high and bye.

5 Q. Did you ever do anything
6 with her outside of work?

7 A. No.

8 Q. Did y'all ever get together
9 during breaks or anything like that?

10 A. No.

11 Q. Did you ever talk about
12 Rance Maddox with her?

13 A. Well, yes, I have.

14 Q. Before you resigned your
15 employment?

16 A. No.

17 Q. Did you talk about it with
18 her since?

19 A. I mean, like when I first
20 quit.

21 Q. How soon after you quit did
22 you talk to her about it?

23 A. I don't know.

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1 Q. What all did you talk about
2 with her?

3 A. She just asked me did, you
4 know, she just heard that he had did
5 something to me and just basically asked
6 me to -- was anything done about it. I
7 was like, no, 'cause they said it was
8 his first offense and that it was
9 nothing they could do until he did it
10 again.

11 Q. Did she say how she heard
12 that he'd done something to you?

13 A. No, she didn't.

14 Q. Did she say that he'd done
15 anything to her?

16 A. Yes.

17 Q. What all do you recall her
18 saying?

19 A. Well, she didn't go into
20 detail. She was just saying, you know,
21 he just, you know, did stuff to her, you
22 know, and it made her feel
23 uncomfortable.

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1 Q. Did she talk about filing a
2 lawsuit against SMART at all?

3 A. Well, no.

4 Q. Did you talk to any
5 attorneys, and I don't want to know --
6 if you did talk to them, I don't want to
7 know what you said to them or they said
8 to you. Did you talk to any attorneys
9 before the time you talked to Cliff
10 Eisenberger on the phone and told him
11 that you weren't returning to SMART?

12 A. Did I talk to attorneys
13 before?

14 Q. Before then about the Rance
15 Maddox incident.

16 A. No.

17 Q. How soon after you talked to
18 Cliff on the phone was the first time
19 you talked to an attorney?

20 A. I don't know.

21 Q. Was it a week or a month or
22 have any estimate as to how long?

23 A. I don't think it was that

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1 soon.

2 Q. Have you talked with Robin
3 Atwell since that time that you talked
4 to her after the first time you talked
5 to her after your employment as a
6 security guard ended?

7 A. I talked to her a couple of
8 times.

9 Q. Just a couple of times?

10 A. Yes.

11 Q. Did you talk about your
12 allegations against SMART with her?

13 A. Allegations against SMART?

14 Q. Your case against SMART.

15 A. Well, no, not -- no. I just
16 basically talked about what happened,
17 you know, about we both were violated
18 basically.

19 Q. When was the last time you
20 spoke with her?

21 A. It's been a while. I don't
22 know.

23 Q. Did she ever come to the

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1 guard shack?

2 A. She came -- while I was
3 working there, I think she came at least
4 once.

5 Q. Do you recall why she came
6 in the guard shack?

7 A. Just to go over some new
8 safety guidelines SMART I guess was
9 trying to --

10 Q. Were you present at the
11 time?

12 A. Yes, we had a meeting that
13 day.

14 Q. You had a meeting?

15 A. Yes.

16 Q. So she was talking to the --

17 A. The guards, yes.

18 Q. Do you recall what the
19 guidelines were?

20 A. No.

21 Q. Besides the incident you
22 described earlier, were there any other
23 times when Rance Maddox came to the

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1 guard shack?

2 A. No.

3 Q. At any time during the time
4 you were employed as a security guard,
5 did you keep a diary?

6 A. No.

7 Q. Did you keep notes about
8 your employment as a security guard?

9 A. No.

10 Q. Did you have a personal
11 calendar during 2006 that you kept?

12 A. No.

13 Q. Did you make any tapes of
14 any employees of ADI or SMART, like
15 audiotapes?

16 A. No.

17 Q. Do you have any documents
18 related to your employment as a security
19 guard in your possession at home or
20 elsewhere?

21 A. Do I have any documents --

22 Q. I'm not asking about
23 anything your attorney sent you. Any

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1 documents you received during the time
2 you were employed as a security guard,
3 do you have any of those in your
4 possession?

5 A. No.

6 Q. None of them are at home or
7 anything like that?

8 A. No.

9 Q. Have you had any since the
10 time you resigned your employment as a
11 security guard?

12 A. No.

13 Q. Other than Robin Atwell,
14 have you talked to any employees of ADI
15 or SMART since your employment with ADI
16 ended? I guess Misti Dicks and Stan
17 Adair, the time we spoke of. Have you
18 spoken with anybody else?

19 A. You mean, have I just talked
20 to them?

21 Q. Yeah, have you talked to
22 anybody.

23 A. Well, I think a couple

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1 months back I talked to Charles. He
2 stays in Troy somewhere, so I talked to
3 him.

4 Q. You talk about your case
5 against --

6 A. No.

7 Q. Have you talked with Misti
8 Dicks or Stan Adair since that time you
9 went back to the facility in March?

10 A. No.

11 Q. Have you talked with
12 anybody, any former current employees of
13 ADI or SMART about this case other than
14 Robin Atwell?

15 A. No.

16 Q. Do you know of anybody that
17 your attorney -- one of your attorney's
18 has talked to you about the case other
19 than Robin Atwell?

20 A. No.

21 Q. Do you know of anybody that
22 we haven't talked about today that would
23 have information related to your claims

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1 in this case?

2 A. Not -- not at this very
3 moment, I don't.

4 Q. What damages are you
5 alleging in your complaint that you've
6 suffered because of the allegations that
7 you made?

8 MR. HORSLEY: Object to the
9 form. Go ahead and answer.

10 Q. I can reask that. That
11 wasn't phrased very well.

12 In Defendant's Exhibit 3,
13 you're alleging that you suffered
14 damages; is that correct?

15 A. Yes.

16 Q. What damages are you
17 claiming in this action?

18 MR. HORSLEY: Same
19 objection. You can answer.

20 A. Lost wages, pain and
21 suffering.

22 Q. Anything else? What all
23 pain and suffering have you gone through

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1 since the incident with Mr. Maddox and
2 the end of your employment as a security
3 guard?

4 A. Well, for one, you know,
5 it's hard to work around other people,
6 you know. It, you know, I try to keep
7 my distance away from people because,
8 you know, you think you can trust people
9 you work with and then for something
10 like that to happen, I keep my distance
11 from everybody. It's hard to perform a
12 job when you have to work as a team
13 player and you're scared to get close to
14 people.

15 Q. Have you seen any doctor,
16 physician, psychiatrist, psychologist,
17 or social worker about any pain and
18 suffering or emotional distress you
19 suffered since because of these
20 incidents?

21 A. No.

22 Q. Have you had -- have there
23 been any other effects than what you've

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1 described that you've suffered because
2 of the conduct of Mr. Maddox or you
3 resigning your employment as a security
4 guard?

5 MR. HORSLEY: Object to the
6 form. You can answer.

7 A. Not that I can think of.

8 Q. No other pain and suffering
9 or emotional distress that you suffered
10 that you can think of?

11 A. No.

12 MS. EUBANK: Was that a no
13 to the last issue?

14 MR. HORSLEY: He asked you
15 if there was any other mental anguish or
16 emotional stress you can talk about.

17 MS. EUBANK: You shook your
18 head. I just couldn't hear you.

19 Q. I thought I heard no, but
20 you tell me if I'm wrong.

21 MR. KELLY: Heard not that I
22 can think of.

23 Q. Am I correct that you said

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1 no or nothing I can think of to the last
2 question?

3 A. Just mental anguish.

4 Q. What?

5 A. Mental anguish.

6 Q. What forms of mental anguish
7 have you suffered?

8 A. Basically, you know, it's --
9 things ain't been the same for me since
10 that day.

11 Q. How have they been
12 different?

13 A. Well, you know, I've had
14 previous job -- a previous job, but you
15 know, I feel like, you know, people out
16 to get me, you know. Just, just things
17 that, you know, you don't normally just
18 think about, you know, just don't
19 normally think about.

20 Q. What things you don't
21 normally think about?

22 A. I don't -- most of the time,
23 I used to be like go outside. I don't

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1 even go outside anymore. I don't go
2 anywhere at night. I stay inside.

3 Q. What all did you do outside
4 before this happened?

5 A. You know, I used to, you
6 know, do little stuff like -- like I
7 stay late in the evening in the park
8 with my kids and maybe at night we be
9 outside barbecuing, you know, just
10 little family activities and stuff.

11 Q. So it's just you don't go
12 outside at night?

13 A. No, at all.

14 Q. You go outside during the
15 day?

16 A. Yes, I will go out during
17 the day, but if I really don't have to,
18 I won't.

19 Q. So other than staying at the
20 park at night, barbecues at night, are
21 there any other activities you don't
22 engage in since this occurred?

23 A. Well, not -- well, you know,

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1 it's not really just the park and all
2 that. Just the point about, you know,
3 the things I used to do, I just, you
4 know, just don't do them anymore.

5 Q. What else is there that you
6 used to do that you don't do anymore?

7 A. What else, I used to, you
8 know, I used to, you know, like to --
9 just daily activities, just regular
10 daily activities.

11 Q. Which daily activities don't
12 you do anymore that you did before?

13 A. Like I used to -- I used to
14 jog. I used to ride bikes. I used to,
15 you know, play kickball with the kids.
16 I mean, just other little stuff.

17 Q. You don't jog, ride bikes,
18 or play kickball anymore because of what
19 happened?

20 A. I really don't.

21 Q. Anything else?

22 A. That's it.

23 Q. Any other mental anguish

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1 you've suffered other than what you've
2 described?

3 A. No.

4 Q. Did Ms. Atwell tell you
5 lawyers to contact regarding your
6 claims?

7 A. She gave me -- she gave me a
8 number.

9 Q. She gave you a number of an
10 attorney?

11 A. Yes.

12 Q. Had you contacted any
13 attorneys before she gave you that
14 number?

15 A. No.

16 Q. Would you like to be
17 reinstated to your position as a
18 security guard?

19 A. No.

20 MR. FLOWERS: That's all
21 I've got.

22

23 FURTHER DEPONENT SAITH NOT

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C E R T I F I C A T E

STATE OF ALABAMA:

JEFFERSON COUNTY:

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor kin to the parties to the action, nor am I in any way interested in the result of said cause.



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DX 1
TO PLAINTIFFS
DEPOSITION

SUBJECT TO CHANGE PER CLIFF EISENBERGER

AVI

SECURITY OFFICER SCHEDULE
LOCATION: SMART ALABAMA LLC
WEEK ENDING: Jan. 28, 2006 :

SHIFT	SUN 22 nd	MON 23 rd	TUES 24 th	WED 25 th	THUR 26 th	FRI 27 th	SAT 28 th
0800-1600	A	B ~ D	B ~ D	B ~ D	B ~ D	B ~ D	F (8PM) ~ A
1600-2400	C	C ~ I	C ~ A	C ~ G	I ~ G	J ~ G	G (8PM) ~ J
2400-0800	J	J	E	E	E	E	G

* Training

OFFICER**PHONE NUMBERS :**

A. CATHY CALDWELL

496-3174 HOME 429-8314 CELL

B. MYSTI DICKS

C.

D. STAN ADAIR

484-9179 HOME 672-1206 CELL

E. HELEN FERRELL

469-2039 HOME 804-5563 CELL

F. BRIAN EISENBERGER

222-9873 HOME 504-1464 CELL

G. CHARLES JOHNSTON

566-6942 HOME

H.

I. DEANA SHELBURNE	504-4342 CELL	
J. ESSENCE HEARNS	335-2870 HOME	

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CLIFF EISENBERGER	222-9873	222-9208	488-6548
CLIFFORD EISENEBERGER	488-4525		

SUBJECT TO CHANGE PER CLIFF EISENBERGER

AVI

SECURITY OFFICER SCHEDULE
LOCATION: SMART ALABAMA LLC
WEEK ENDING: Jan. 28, 2006 :

SHIFT	SUN 22 nd	MON 23 rd	TUES 24 th	WED 25 th	THUR 26 th	FRI 27 th	SAT 28 TH
0800-1600	A	B ~ D	B ~ D	B ~ D	B ~ D	B ~ D	F (8PM) ~ A
1600-2400	C	C ~ I	C ~ A	C ~ G	I ~ G	J ~ G	G (8PM) ~ J
2400-0800	J	J	E	E	E	E	G

* Training

OFFICER**PHONE NUMBERS :**

A. CATHY CALDWELL

496-3174 HOME 429-8314 CELL

B. MYSTI DICKS

C.

D. STAN ADAIR

484-9179 HOME 672-1206 CELL

E. HELEN FERRELL

469-2039 HOME 804-5563 CELL

F. BRIAN EISENBERGER

222-9873 HOME 504-1464 CELL

G. CHARLES JOHNSTON

566-6942 HOME

H.

I. DEANA SHELBURNE

504-4342 CELL

J. ESSENCE HEARNS

335-2870 HOME

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CLIFF EISENBERGER	222-9873	222-9208	488-6548
CLIFFORD EISENEBERGER	488-4525		

DX 2
TO PLAINTIFFS
DEPOSITION

12/31/2008

[illegible]

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

CATHY CALDWELL, an individual)

2006 DEC -8 A 10:10

Plaintiff,)

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

v.)

Civil Action No.:

2:06-cv-1088-mht

SMART ALABAMA, LLC, a legal)

JURY DEMAND

entity,)

Defendant.)

COMPLAINT

1. This is an action at law pursuant to 42 U.S.C. § 2000e *et seq.*, to redress unlawful employment practices. The jurisdiction of this court is invoked under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(4), as this matter in controversy involves a federal question and is an action by Federal law to redress civil rights secured to the plaintiff.
2. On May 31, 2006, the plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC"). The plaintiff filed her Charge of Discrimination within 180 days of the most recent discriminatory act. On October 16, 2006, the plaintiff received from the EEOC a Notice of Right to Sue. The plaintiff has filed her lawsuit within 90 days of the receipt of the Notice of Right to Sue and therefore has met all administrative prerequisites to the filing of this action.

PARTIES

3. The plaintiff, Cathy Caldwell, is over the age of 21 years, and is a citizen of the

United States and is a resident of the State of Alabama.

4. The defendant, Smart Alabama, LLC, at all times pertinent to the allegations contained in this complaint, was doing business in Crenshaw County, Alabama. At all times relevant hereto, the defendant was plaintiff's employer, and is an employer within the meaning of 42 U.S.C. § 2000e-9(b).

FACTS

5. In or about December 2005 and January 2006, the Plaintiff was employed with the defendant, Smart Alabama, LLC.
6. During the time that the Plaintiff was employed by the defendant, the Plaintiff made complaints of unwelcomed sexual harassment. The Plaintiff complained that she was being subjected to unwelcomed and uninvited sexual harassment by Rance Maddox who, at that time, was a supervisory employee of the defendant.
7. The defendant did not take reasonable and sufficient corrective action in response to the Plaintiff's complaints and the sexual harassment continued unabated.
8. Instead of taking necessary and reasonable corrective action in response to the Plaintiff's complaints, the defendant ratified and condoned the unlawful acts and did so despite having actual and legal knowledge and notice of those unlawful and discriminatory acts; or, if the defendant did take corrective action then such action was inadequate and did not end the unlawful acts or correct the adverse effects of the unlawful acts.
9. The unlawful acts complained of were malicious and were perpetrated against the Plaintiff with a reckless indifference to the Plaintiff's protected civil rights.
10. Following the Plaintiff's complaints and notice to the defendant as described

hereinabove, and the defendant's ratification of the harassment, the Plaintiff was forced to resign from her employment with the defendant on January 28, 2006 due to the hostile environment and the defendant's refusal to address the sexual harassment.

COUNT I

11. Plaintiff realleges and readopts paragraphs 1 through 10 above as if fully set forth herein.
12. The plaintiff was subjected to unlawful discrimination and harassment in violation of 42 U.S.C. § 2000(e) *et seq.*, in that plaintiff was subjected to an unwelcomed and uninvited sexual harassment and when plaintiff brought this to the attention of her supervisors, nothing was done to remedy the situation; or, if steps were taken in attempt to remedy the situation, then such steps were inadequate, causing the plaintiff to resign from her employment with the defendant.
13. As a direct and proximate result of the defendant's discriminatory and harassing actions, the plaintiff has been deprived of economic and non-economic benefits, including, but not limited to lost wages, mental anguish, emotional distress, humiliation, embarrassment and loss of training and job education.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court will grant the following relief:

- (i) Declare the defendant's conduct to constitute a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*;
- (ii) Order the defendant to pay compensatory and punitive damages to the plaintiff in such an amount to be determined by a jury of the plaintiff's peers;

- (iii) Order the defendant to pay plaintiff's attorney's fees and costs relative to this action pursuant to U.S.C. § 2000e-5(k) and other lawful authority;
- (iv) Order the defendant to pay to the plaintiff all the pay and benefits she has lost as a result of the discriminatory and unlawful acts complained herein;
- (v) Order the defendant to cease and desist from the discriminatory and unlawful acts complained of herein;
- (vi) Order and award such other and further relief to which plaintiff is entitled and which this Honorable Court deems just and proper.

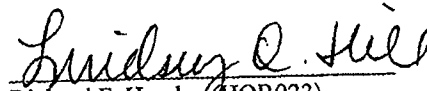
COUNT II

- 14. Plaintiff adopts and realleges paragraphs 1 through 13 above as if fully set forth herein.
- 15. The Plaintiff was subjected to a hostile environment and sexually charged environment in violation 42 U.S.C. § 2000(e) *et seq.*, in that the defendant had actual and legal knowledge and notice that unlawful and discriminatory and sexually harassing practices were being perpetrated toward the Plaintiff in the workplace, yet the defendants failed to prevent or stop the unlawful and discriminatory practices.
- 16. The Plaintiff was subjected to sexual harassment in the workplace so severe and pervasive as to alter the terms and conditions of the Plaintiff's employment and to create an abusive and hostile working environment.
- 17. As a direct and proximate result of the sexual harassment and the sexually charged workplace and the hostile working environment as described above, the Plaintiff has been deprived of economic and non-economic benefits, including but not

limited to lost wages, emotional distress, mental anguish, humiliation,
embarrassment and loss of training and job education.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court
will grant the following relief:

- (i) Declare the defendant's conduct to constitute a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*;
- (ii) Order the defendant to pay compensatory and punitive damages to the plaintiff in such an amount to be determined by a jury of the plaintiff's peers;
- (iii) Order the defendant to pay plaintiff's attorney's fees and costs relative to this action pursuant to U.S.C. § 2000e-5(k) and other lawful authority;
- (iv) Order the defendant to pay to the plaintiff all the pay and benefits she has lost as a result of the discriminatory and unlawful acts complained herein;
- (v) Order the defendant to cease and desist from the discriminatory and unlawful acts complained of herein;
- (vi) Order and award such other and further relief to which plaintiff is entitled and which this Honorable Court deems just and proper.


Richard F. Horsley (HOR023)
Lindsey O. Hill (HIL055)
Attorneys for Plaintiff

OF COUNSEL:

GOOZEE, KING & HORSLEY
Shades Brook Bldg., Suite 200
3300 Cahaba Road
Birmingham, Alabama 35223
(205) 871-1310

****Plaintiff hereby demands a trial by struck jury on all issues of this case.****



Of Counsel

SERVE DEFENDANT AS FOLLOWS:

Smart Alabama, LLC
c/o George B. Harris
401 Adams Ave., Ste. 780
Montgomery, Alabama 36104

* **BY CERTIFIED MAIL**

A.D.I
EXTENDED DUTY REPORT

SECURITY OFFICER: _____

PAGE: ____ OF ____

DATE: _____

OPERATION: _____

DAY OF WEEK: _____

SHIFT: _____ TO _____

On January 28, 2006 at approx. 1145
Cliff Eisenberger called the plant.
Asked to talk to Franice Madril. Franice was
in the parking lot. Officer Caldwell went
to go get Franice. He spoke to Cliff Eisenberger
at 1153. I went to make round of plant
when I returned to the guard shack
at approx. 1245 Officer Caldwell told
me that Franice had a conversation
with her and kissed her on the mouth.
Officer Caldwell then called Cliff Eisenberger
and told him the situation that had
just occurred.

OFFICERS SIGNATURE: _____

Diana Shelburne

SUPERVISORS SIGNATURE: _____

STATE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER 420-2006-03674
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			
_____ and EEOC State or local Agency, if any			
NAME (Indicate Mr., Ms., Mrs.) Mrs. Cathy Caldwell		HOME TELEPHONE (Include Area Code) (334) 672-0676	
STREET ADDRESS 6053 AL Hwy 87, Troy, Alabama 36079		CITY, STATE AND ZIP CODE DATE OF BIRTH	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Smart Alabama LLC		NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code) (334) 355-5800
STREET ADDRESS 121 Shin Young Drive		CITY, STATE AND ZIP CODE Luverne, Alabama 36049	COUNTY
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		/ / 1 / 28 / 2006 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)) See Attachment			
<div style="text-align: center;">RECEIVED</div>			
<input type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the foregoing is true and correct. Date 05-31-06 Cathy Caldwell Charging Party (Signature)		NOTARY: (When necessary for State and Local Requirements) Virginia D. Green - Expires March 18, 2010 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT Cathy Caldwell SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

CALDWELL V. SMART
FOIA 003

While employed at Smart, I was repeatedly harassed in a sexual manner by Rance Maddox. On or about January, 2006, Mr. Maddox touched me in an area below my waist and rubbed that area with his hand. On this same occasion, Mr. Maddox kissed me without my consent. At times prior to January, 2006, Mr. Maddox made "passes" at me and asked if I would go on a date with him. He also asked me if I would spend the night with him. I reported these events to management personnel, and they informed me that there was nothing they could do. As a result, I was forced to quit my job on January 28, 2006. I quit as a direct result of the sexual advances by Mr. Maddox, the hostile environment created by those sexual advances and management's refusal to stop this conduct.

RECEIVED
E-117

JUN - 5 2006

CALDWELL V. SMART
FOIA 004

PAGE 1 of 2

CLIENT'S COPY

Security Officer Eisenberger		Operation <u>SMART AL LLC</u>		Client Notes:	
Date <u>2-8-06</u>		Day of Week <u>Wed.</u>		Shift <u>to</u>	
Relieved —		Post —			
Relieved By —		Post —			
Keys Received From —		Keys Passed To —			

DID YOU OBSERVE, DETECT OR WERE THERE ANY	YES	NO	SECURITY OFFICER'S REMARKS (Please Print)
1 Tolls, Stations Missed			<p>In reference to C. Caldwell's report of Sat. 1-28-06,</p> <p>I met with HR on the morning of the 30th to discuss the events of Sat. 1-28-06. HR told me this would be dealt with properly and to inform C. Caldwell that there will not be any more contact between the two parties, and if there is to inform them immediately.</p> <p>C. Caldwell had already returned to work on Sunday 1-29-06 and was scheduled to return on Tuesday 1-31-06. I was to meet with C. Caldwell at 1600 when she reported for her shift. On 1-31-06 @ 1525 C. Caldwell drove to the gate, I asked her to come to the guard house instead of reporting to the reception desk so I could tell her what was going on with her situation from 1-28-06. She replied OK and drove into the parking lot.</p>
2 New Instructions Received			
3 Classified Information Violations			
4 Suspicious Activities			
5 Trespassers, Intrusion Alarms			
6 Windows, Doors, Offices Unlocked			
7 Theft, Attempted Theft			
8 Maintenance Required, Lights Out			
9 Broken Locking Devices			
10 Perimeter Barrier Hazards			
11 Parking Lot Violations			
12 Outside Security Hazards			
13 Fire Hazards, Poor Housekeeping			
14 Fire Doors, Lanes, Exits Blocked			
15 Fires, Fire Alarms			
16 Sprinkler Heads, Risers Blocked			
17 Smoking Violations			
18 Fire Extinguisher Check			
19 Unusual Odors			
20 Noisy Machinery			
21 General Safety Hazards			
22 Machinery Guards Broken			
23 Machinery Left Running			
24 Hazardous Stacking			
25 Electrical Equipment Box Violations			
26 Unsafe Vehicle Operation			
27 Unsafe Practices			
28 Health Hazards			
29 Complaints Other Than Above			

Inspected By _____	Time In _____	Total Hours Worked _____	Security Officer's Signature _____
Training Topic _____	Time Out _____		
		Hrs. _____ Minutes _____	

employees are instructed to observe safety and security hazards, the company does not assume any responsibility for the failure of its employees to detect and indicate hazards in the course of their inspections.

Supervisor's Signature

A.D.I.
EXTENDED DUTY REPORTSECURITY OFFICER: EisenbergerPAGE 2 OF 2DATE: 2-8-06OPERATION: SMART AL. LCCDAY OF WEEK: WedSHIFT 1600 TO 2400

She drove back to the main gate a few minutes later and said she had forgotten her drink, she was going to run to the store and be right back. She left at 1529 and never returned until a week later to pick up her check. Numerous calls where made to C. Caldwell's home + cell phones, messages were left, we never got any response. Our meeting with C. Caldwell to tell her about the action taken never happened because of her leaving. She never gave us an opportunity to explain how this matter was dealt with

OFFICERS SIGNATURE: Cliff Eisenberger / President / Operations

SUPERVISOR SIGNATURE: _____

TAB “B”

DECLARATION OF CLIFF EISENBERGER

1. My name is Cliff Eisenberger. I am over the age of twenty-one and I have personal knowledge of the facts in this declaration, which I give voluntarily and without coercion.

2. I am Owner and President of Operations of Alany Divisions, Inc. ("ADI"), an industrial security supply service located out of Andalusia, Alabama. ADI supplies security guards to manufacturing facilities such as SMART Alabama, LLC, in Luverne, Alabama.

3. ADI, not SMART, employs the security guards supplied by ADI to the SMART facility. No SMART employees supervise the guards, direct their work, train them, determine their pay, pay them, deduct taxes, schedule the hours or days they will work, or maintain responsibility for hiring, firing, or adjusting the terms of employment of the guards.

4. ADI, not SMART, was Cathy Caldwell's sole employer when she worked as an ADI guard at the SMART facility.

a. ADI, not SMART, paid wages to Cathy Caldwell, deducted taxes from her checks, and determined the rate of pay she would receive. Attached as "Attachment A" is a summary of the pay Ms. Caldwell received from ADI.

b. ADI, not SMART, scheduled the work of Cathy Caldwell and the other security guards and trained Ms. Caldwell and the other guards. Attached as "Attachment B" are schedules created by ADI for the security guards while Ms. Caldwell was an ADI employee.

c. ADI, not SMART, directed and supervised the work of Cathy Caldwell and the other security guards. Ms. Caldwell's work was directed by either me or Stan Adair, an ADI Supervisor who worked weekdays at the SMART facility.

d. ADI, not SMART, set the terms and conditions of Cathy Caldwell's and the other security guards' employment.

e. ADI, not SMART was responsible for hiring and firing guards such as Cathy Caldwell. I made the decision to hire Ms. Caldwell.


f. ADI was responsible for workers compensation insurance for Cathy Caldwell and the other security guards.

5. As President and Owner of ADI, I am not employed by nor do I have an ownership interest in SMART. SMART and ADI are separately owned companies. No SMART employee, officer, or manager maintains any ownership interest or management position with ADI. ADI provides security services to other business besides SMART.

6. ADI, not SMART, employed Misty Dix during the time she was working as a guard at the SMART facility. Ms. Dix frequently performed the position of receptionist, which was a position filled by ADI employees.

7. I declare under penalty of perjury that the foregoing is true and correct.


CLIFF EISENBERGER


DATE

ATTACHMENT
“A”
To TAB “B”

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

CATHY CALDWELL, an individual)

Plaintiff,)

v.)

SMART ALABAMA, LLC, a legal)
entity,)

Defendant.)

2006 DEC -8 A 10:10

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No.:

2:06cv1088-mht

JURY DEMAND

COMPLAINT

1. This is an action at law pursuant to 42 U.S.C. § 2000e *et seq.*, to redress unlawful employment practices. The jurisdiction of this court is invoked under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(4), as this matter in controversy involves a federal question and is an action by Federal law to redress civil rights secured to the plaintiff.
2. On May 31, 2006, the plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC"). The plaintiff filed her Charge of Discrimination within 180 days of the most recent discriminatory act. On October 16, 2006, the plaintiff received from the EEOC a Notice of Right to Sue. The plaintiff has filed her lawsuit within 90 days of the receipt of the Notice of Right to Sue and therefore has met all administrative prerequisites to the filing of this action.

PARTIES

3. The plaintiff, Cathy Caldwell, is over the age of 21 years, and is a citizen of the

United States and is a resident of the State of Alabama.

4. The defendant, Smart Alabama, LLC, at all times pertinent to the allegations contained in this complaint, was doing business in Crenshaw County, Alabama. At all times relevant hereto, the defendant was plaintiff's employer, and is an employer within the meaning of 42 U.S.C. § 2000e-9(b).

FACTS

5. In or about December 2005 and January 2006, the Plaintiff was employed with the defendant, Smart Alabama, LLC.
6. During the time that the Plaintiff was employed by the defendant, the Plaintiff made complaints of unwelcomed sexual harassment. The Plaintiff complained that she was being subjected to unwelcomed and uninvited sexual harassment by Rance Maddox who, at that time, was a supervisory employee of the defendant.
7. The defendant did not take reasonable and sufficient corrective action in response to the Plaintiff's complaints and the sexual harassment continued unabated.
8. Instead of taking necessary and reasonable corrective action in response to the Plaintiff's complaints, the defendant ratified and condoned the unlawful acts and did so despite having actual and legal knowledge and notice of those unlawful and discriminatory acts; or, if the defendant did take corrective action then such action was inadequate and did not end the unlawful acts or correct the adverse effects of the unlawful acts.
9. The unlawful acts complained of were malicious and were perpetrated against the Plaintiff with a reckless indifference to the Plaintiff's protected civil rights.
10. Following the Plaintiff's complaints and notice to the defendant as described

hereinabove, and the defendant's ratification of the harassment, the Plaintiff was forced to resign from her employment with the defendant on January 28, 2006 due to the hostile environment and the defendant's refusal to address the sexual harassment.

COUNT I

11. Plaintiff realleges and readopts paragraphs 1 through 10 above as if fully set forth herein.
12. The plaintiff was subjected to unlawful discrimination and harassment in violation of 42 U.S.C. § 2000(e) *et seq.*, in that plaintiff was subjected to an unwelcomed and uninvited sexual harassment and when plaintiff brought this to the attention of her supervisors, nothing was done to remedy the situation; or, if steps were taken in attempt to remedy the situation, then such steps were inadequate, causing the plaintiff to resign from her employment with the defendant.
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WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this Honorable Court will grant the following relief:

- (i) Declare the defendant's conduct to constitute a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*;
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- (iii) Order the defendant to pay plaintiff's attorney's fees and costs relative to this action pursuant to U.S.C. § 2000e-5(k) and other lawful authority;
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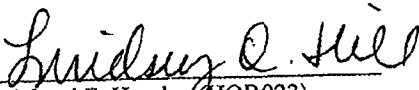
COUNT II

- 14. Plaintiff adopts and realleges paragraphs 1 through 13 above as if fully set forth herein.
- 15. The Plaintiff was subjected to a hostile environment and sexually charged environment in violation 42 U.S.C. § 2000(e) *et seq.*, in that the defendant had actual and legal knowledge and notice that unlawful and discriminatory and sexually harassing practices were being perpetrated toward the Plaintiff in the workplace, yet the defendants failed to prevent or stop the unlawful and discriminatory practices.
- 16. The Plaintiff was subjected to sexual harassment in the workplace so severe and pervasive as to alter the terms and conditions of the Plaintiff's employment and to create an abusive and hostile working environment.
- 17. As a direct and proximate result of the sexual harassment and the sexually charged workplace and the hostile working environment as described above, the Plaintiff has been deprived of economic and non-economic benefits, including but not

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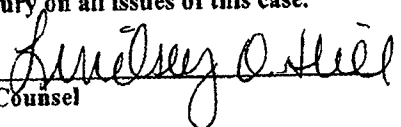
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- (v) Order the defendant to cease and desist from the discriminatory and unlawful acts complained of herein;
- (vi) Order and award such other and further relief to which plaintiff is entitled and which this Honorable Court deems just and proper.


Richard F. Horsley (HOR023)
Lindsey O. Hill (HIL055)
Attorneys for Plaintiff

OF COUNSEL:

GOOZEE, KING & HORSLEY
Shades Brook Bldg., Suite 200
3300 Cahaba Road
Birmingham, Alabama 35223
(205) 871-1310

****Plaintiff hereby demands a trial by struck jury on all issues of this case.****


Of Counsel

SERVE DEFENDANT AS FOLLOWS:

Smart Alabama, LLC
c/o George B. Harris
401 Adams Ave., Ste. 780
Montgomery, Alabama 36104

* **BY CERTIFIED MAIL**

A.D.I
EXTENDED DUTY REPORT

SECURITY OFFICER: _____ PAGE: ____ OF ____

DATE: _____ OPERATION: _____

DAY OF WEEK: _____ SHIFT: _____ TO _____

On January 28, 2006 at approx. 1145
Cliff Eisenberger called the plant.
Asked to talk to Marcie Madril. Marcie was
in the parking lot. Officer Caldwell went
to go get Marcie. He spoke to Cliff Eisenberger
at 1153. I went to make round of plant
when I returned to the guard shack
at approx. 1245 Officer Caldwell told
me that Marcie had a conversation
with her and kissed her on the mouth.
Officer Caldwell then called Cliff Eisenberger
and told him the situation that had
just occurred.

OFFICERS SIGNATURE: _____

SUPERVISORS SIGNATURE: _____

STATE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER 420-2006-03674
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			
State or local Agency, if any		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Mrs. Cathy Caldwell		HOME TELEPHONE (Include Area Code) (334) 672-0676	
STREET ADDRESS 6053 AL Hwy 87, Troy, Alabama 36079		CITY, STATE AND ZIP CODE DATE OF BIRTH	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Smart Alabama LLC		NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code) (334) 355-5800
STREET ADDRESS 121 Shin Young Drive		CITY, STATE AND ZIP CODE Luverne, Alabama 36049	COUNTY
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		DATE DISCRIMINATION TOOK PLACE EARLIEST / / LATEST 1 / 28 / 2006 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)) See Attachment			
<input type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures. <input type="checkbox"/> I declare under penalty of perjury that the foregoing is true and correct.			
Date 05-31-06 Charging Party (Signature) <i>Cathy Caldwell</i>		NOTARY - (When necessary for State and Local Requirements) <i>Ingmar B. Green - Expires March 18, 2010</i> I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT <i>Cathy Caldwell</i> SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

EEOC FORM 5 (Rev. 06/92)

CALDWELL V. SMART
FOIA 003

While employed at Smart, I was repeatedly harassed in a sexual manner by Rance Maddox. On or about January, 2006, Mr. Maddox touched me in an area below my waist and rubbed that area with his hand. On this same occasion, Mr. Maddox kissed me without my consent. At times prior to January, 2006, Mr. Maddox made "passes" at me and asked if I would go on a date with him. He also asked me if I would spend the night with him. I reported these events to management personnel, and they informed me that there was nothing they could do. As a result, I was forced to quit my job on January 28, 2006. I quit as a direct result of the sexual advances by Mr. Maddox, the hostile environment created by those sexual advances and management's refusal to stop this conduct.

RECEIVED
JUN 5 2006

JUN - 5 2006

END

CALDWELL V. SMART
FOIA 004

Supervisor's Signature _____

**A.D.I.
EXTENDED DUTY REPORT**

SECURITY OFFICER: Eisenberger

PAGE 2 **OF** 2

DATE: 2-8-06

OPERATION: SMART AL. LCC

DAY OF WEEK: Wed

SHIFT 1600 **TO** 2400

She drove back to the main gate a few minutes later and said she had forgotten her drink, she was going to run to the store and be right back. She left at 1529 and never returned until a week later to pick up her check. Numerous calls where made to C. Caldwell's home + cell phones, messages were left, we never got any response. Our meeting with C. Caldwell to tell her about the action taken never happened because of her leaving. She never gave us an opportunity to explain how this matter was dealt with.

OFFICERS SIGNATURE: Cliff Eisenberger / President / Operations

SUPERVISOR SIGNATURE: _____

ATTACHMENT
“B”
To TAB “B”

SUBJECT TO CHANGE PER CLIFF EISENBERGER

AVI

SECURITY OFFICER SCHEDULE
LOCATION: SMART ALABAMA LLC
WEEK ENDING: FEB. 4TH, 2006

SHIFT	SUN 29 TH	MON 30 TH	TUES 31 ST	WED 1 ST	THUR 2 ND	FRI 3 RD	SAT 4 TH
0800-1600	A	B ~ D	B ~ D	B ~ D	B ~ D	B ~ D	F (8PM) ~ I
1600-2400	C	C ~ I	C ~ A G	C ~ G	I ~ G	J ~ G	G (8PM) ~ J
2400-0800	J	J	E	E	E	E	G

* Training

OFFICER**PHONE NUMBERS**

A. CATHY CALDWELL

B. MYSTI DICKS

C.

D. STAN ADAIR

E. HELEN FERRELL

F. BRIAN EISENBERGER

G. CHARLES JOHNSTON

H.

I. DEANA SHELBURNE

J. ESSENCE HEARNS

496-3174 HOME 429-8314 CELL

484-9179 HOME 672-1206 CELL

469-2039 HOME 804-5563 CELL

222-9873 HOME 504-1464 CELL

566-6942 HOME

504-4342 CELL

335-2876 HOME

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CLIFF EISENBERGER		222-9873	222-9208	488-6548
CLIFFORD EISNEBERGER		488-4525		

SUBJECT TO CHANGE PER CLIFF EISENBERGER

AVI

SECURITY OFFICER SCHEDULE
LOCATION: SMART ALABAMA LLC
WEEK ENDING: FEB. 4TH, 2006

SHIFT	SUN 29 TH	MON 30 TH	TUES 31 ST	WED 1 ST	THUR 2 ND	FRI 3 RD	SAT 4 TH
0800-1600	A	B ~ D	B ~ D	B ~ D	B ~ D	B ~ D	F (8PM) ~ I
1600-2400	C	C ~ I	C ~ A G	C ~ G	I ~ G	J ~ G	G (8PM) ~ J
2400-0800	J	J	E	E	E	E	G

* Training

OFFICER**PHONE NUMBERS**

A. CATHY CALDWELL

B. MYSTI DICKS

C.

D. STAN ADAIR

E. HELEN FERRELL

F. BRIAN EISENBERGER

G. CHARLES JOHNSTON

H.

I. DEANA SHELBURNE

J. ESSENCE HEARNS

496-3174 HOME 429-8314 CELL

484-9179 HOME 672-1206 CELL

469-2039 HOME 804-5563 CELL

222-9873 HOME 504-1464 CELL

566-6942 HOME

504-4342 CELL

335-2876 HOME

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CLIFF EISENBERGER		222-9873	222-9208	488-6548
CLIFFORD EISNEBERGER		488-4525		

TAB “C”

DECLARATION OF GARY SPORT

1. My name is Gary Sport. I am over the age of twenty-one and I have personal knowledge of the facts in this declaration, which I give voluntarily and without coercion.

2. I am employed as General Manager of Administration for SMART Alabama, LLC, in Luverne, Alabama. SMART Alabama is an automobile parts manufacturing plant which supplies parts to Hyundai Motor Manufacturing of Alabama.

3. SMART maintains a contractual relationship with Alany Divisions, Inc. ("ADI") to supply security guards to work on the SMART premises. ADI hires, pays, and supervises the security guards. Attached as "Attachment A" to this affidavit are the terms of the agreement between SMART and ADI.

4. SMART does not employ the security guards supplied by ADI. No SMART employees supervise the guards, direct their work, train them, determine their pay, pay them, deduct taxes, schedule the hours or days they will work, or maintain responsibility for hiring, firing, or adjusting the terms of employment of the guards.

5. ADI, not SMART, was Cathy Caldwell's sole employer when she worked as an ADI guard at the SMART facility.

a. A review of payroll records and other business records kept under my custody and control in the ordinary course of business reveals SMART has never paid any wages to Cathy Caldwell nor any other security guard employed by ADI.

b. A review of benefit records and other business records kept under my custody and control in the ordinary course of business reveals SMART has never paid any benefits to Cathy Caldwell nor any other security guard employed by ADI.

c. No one out of SMART directed the work of Cathy Caldwell nor any other security guard; any concerns regarding any performance of the agreement between SMART and ADI are directed by me to ADI President Cliff Eisenberger.


d. SMART did not prohibit Cathy Caldwell or other ADI employees from serving other ADI customers or having other jobs while serving SMART, and does not set the hours of any specific guard; SMART only looks to ADI for coverage by someone during a particular time.

e. SMART is not responsible for withholding or workers' compensation for the ADI security guards.

6. SMART has never employed Stan Adair or Misty Dix. Mr. Adair is currently employed as a Supervisor for ADI working on the SMART premises and Ms. Dix was formerly employed as a guard for ADI.

7. SMART and ADI are separately owned companies. No SMART officer, manager, or employee maintains an ownership interest of or management position with ADI. No ADI officer, manager, or employee participates in the ownership or the management of SMART.

8. I declare under penalty of perjury that the foregoing is true and correct.



GARY SPORT

7/26/07

DATE

ATTACHMENT

“A”

To TAB “C”

기안서보기

Page 1 of 2

Approval Letter

Approval (1)	Approval (2)	Approval (3)	
권이용 이사	홍호만 공장장	김종철 사장	
2005/06/04	2005/06/05	2005/06/05	
Document ID	(기)제2005-06-0106	Sending Date	2005/06/04
Keeping Term	3년	Sending Department	H/R
Writer	Gary Sport	Phone Number	
Subject	(기)Change of Security Services Company		

Scope: SMART, AL has recently negotiated to transfer security services from R&R Security to ADI Security Services. Below is the scope and cost comparisons as submitted by Mr. Rance Maddox, Safety Manager of SMART. The transfer of services took effect on May 23, 2005.

Subject: The overall scope for SMART ALABAMA, LLC Security
The purpose of this policy is to establish a standard of operation and administration for Security at SMART ALABAMA.

1. Procedure for overall scope

A. Preparation For The Guard House

Furniture

- 1.) Counters (window high)
- 2.) One Desk
- 3.) Two High Chairs
- 4.) One regular desk chair
- 5.) Two way radios (for communications with management)
- 6.) Phone System
- 7.) Air Conditioner/Heater
- 8.) Electric Outlets
- 9.) Access to control arms (drop arms)

B. Security Force Operations

- 1.) ADI Security Force at the SMART Alabama, LLC Plant consists of two primary posts, one at the main gate and one receptionist in the daytime.
- 2.) Second shift there will be one officer at the main gate also during shift change there will be one hour over lap for roving.
- 3.) Third shift there will be one officer at the main gate also during shift change there will be one hour over lap for roving.
- 4.) Weekends and Holidays there will be one officer at the main gate also during shift change there will be one hour over lap for roving.

C. Visitors Policy

- 1.) Any person entering SMART Alabama, LLC property must be logged accordingly. Off duty SMART Alabama, LLC employees and their visitors must be treated as visitors and comply with all of the same requirements as stated. SMART Alabama, LLC employees visiting from other facilities will be issued a gold badge. Visitors entering the property with white badges are allowed access to the following only: Lobbies, Receiving, and Shipping. Employees with white visitors' badges are also allowed access to the employee support offices in front of the plant. At no time should an off shift employee be allowed to enter production areas without supervisors permission.

D. ADI carries out services which switch from R&R Security into ADI. The condition has been changed into the following.

Cost Comparison

CLASSIFIED	PREVIOUS	CURRENT CHANGE
SECURITY COMPANY	R& R	ADI
TERMS OF PAYMENT	\$ 12.00/HR FOR GUARDS \$ 9.40/HR FOR RECEPTIONIST	\$10.00/HR FOR GUARDS \$8.50/HR FOR RECEPTIONIST
DURATION	ONE YEAR CONTRACT	ONE YEAR CONTRACT
OTHERS	WITHOUT UNIFORMS	WITH UNIFORMS
JOB DESCRIPTIONS	SEE ATTACHMENTS	SEE ATTACHMENTS

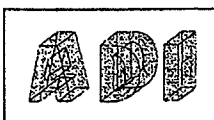
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**SECURITY SERVICES
PROPOSAL
FOR
SMART Alabama, LLC**



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January 3, 2005

Carolyn Pierce
Safety Manager
SMART Alabama, LLC
121 Shinyoung Drive
Luverne, Alabama 36049

Dear Carolyn,

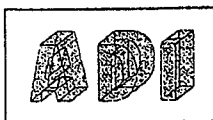
It was a pleasure meeting with you to discuss the security program for your facility. Per our conversation, I am submitting a proposal and information about ADI.

ADI is a contract security company. Our company carefully develops each package for its clients to ensure that all needs are accomplished. The Quality Control Manager will periodically review and update these specifications to ensure that we are constantly conforming to the requirements of SMART Alabama, LLC. As always, these plans will be developed and coordinated with the approval of SMART Alabama, LLC management.

ALANY believes that the key to any successful security operation is proper supervision and training of security officers. We provide this supervision with one on-site field officer that will maintain daily supervision. We will have daily contact with SMART Alabama management to guarantee that our service conforms to your requirements.

Training is also an essential ingredient for a successful security program, because without training, the security officer cannot remain as alert, efficient or knowledgeable as is necessary in such a position of responsibility. ALANY Division Security will maintain a continuous training program for our officers to make certain they understand their responsibilities, duties and powers as a security officer. Each security officer is required to complete four (4) units of training per month (one per week) as long as they work for ALANY. These may include written exams, reading assignments, video tape and classroom lectures.

Certain standards and procedures exist in our company for all services we render:



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Employee Selection:

At ADI, we recognize that service depends on people and that a service company is ultimately judged by the people. The ability to select, communicate with and organize employees is the basic requirement of any service company. ADI's staff of certified managers has the right combination of education and experience to excel in meeting these requirements.

Hiring

By offering attractive working conditions and flexible hours, ADI is able to hire top-notch workers. Many of our staff members are technicians, factory workers, teachers and others already working who supplement their regular income with additional hours of employment as ADI personnel.

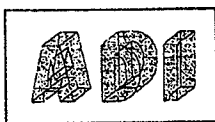
The ADI management team emphasizes competence and cooperativeness in its selection of personnel. Our employees are trained to be team players. One of our primary goals is to instill a sense of dedication to good job performance in every ADI employee.

A background check is made on each employee. Hiring the right person for the job is one of the most important factors in providing quality service for our customers. Our system works well for us and for our employees. Our people take pride in doing a good job.

Training - A Proven System

ADI has developed proven training methods to let employees know exactly what is expected at each job and within each task. We have found that when shortcomings occur, inadequate training is usually the cause. **That is why training plays such an important role in our contract management system.** We take considerable pride in ensuring that only a properly trained security staff is involved in the security of your property. ADI's training typically involves three steps, which are:

- A. Orientation:** A new employee is welcomed to the company through our orientation program. We recognize that the first two weeks on the job create a powerful and lasting impression, and orientation training is designed to teach basic security procedures and to show new workers the meaning of teamwork. We also give them a set of written rules and specific information on their job assignments.



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- B. On-The-Job-Training / Apprenticeships:** This form of training starts when a new worker begins his or her job assignment. We often use the apprentice system, in which a new worker learns the ropes through pairing with a veteran worker or supervisor.
- C. Supervisory Support:** Our operations manager then trains employees in state-of-the-art techniques and security procedures. Our employees receive detailed instructions on safety procedures and compliance with OSHA standards. All employees are briefed on conduct, security procedures, appearance and customer-client relationships.

SUPERVISION:

ADI believes that the key to any successful security is proper supervision and well trained personnel. Our company employs Operations Managers and site supervisors who are required to ensure that our technicians are trained and properly performing their duties.

A site supervisor who meets your requirements and approval will be selected for your location. The site supervisor will serve as the client contact and will be responsible for:

- * Overall supervision of the account
- * Planning and scheduling of all work
- * Accountability for all supplies and equipment used
- * Coordinating all unscheduled work
- * Selection of personnel
- * Insuring that quality work is performed
- * Justifying hours required to accomplish the work
- * Being on call and available to handle emergencies

EMPLOYEE BENEFITS:

Time and one-half is paid employees if work is performed on the following seven paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day.

All ADI hourly employees receive one week paid vacation after one year of employment.

ADI is currently working on a health care package to offer our employees. A plan is expected to be available during early 2005.



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WAGE SCALE:

ADI's wage scale is designed to attract the best qualified security personnel available and provide continuity of personnel.

**ALANY DIVISIONS INC.
SERVICE PHILOSOPHY**

- * We believe in being consistently customer oriented, and our organization is structured to be customer friendly. Satisfying customer needs is the driving force behind our growth and success.
- * We anticipate customer need and respond quickly to resolve problems.
- * We are committed to earning the trust of every customer through hard work and integrity.
- * Constant communication with each customer is vitally important to our success. good communication enables us to obtain the information we need to provide the services that really count to each customer.
- * We believe that we should always treat a customer's property as carefully as we would treat our own.
- * Efficient, effective service and competitive pricing translate customer satisfaction and company success.

ALANY'S SUPERIOR PERFORMANCE

ADI's job performance will be outstanding. Maintaining your facility in peak condition is our job.

ADI's success is an outgrowth of our unique assets:

- * **EXPERIENCE:** Our company officials have worked with all types of commercial and industrial establishments since 1984.
- * **RELIABILITY:** Corporate officials you have dealt with for years; knowing the job, and any extras you need done, are taken care of immediately.



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- * **PERSONNEL:** Experienced management with business backgrounds and a motivated, responsible work force.
- * **QUALITY CONTROL:** Measurable, defined performance standards to meet the needs of each customer.
- * **FLEXIBILITY:** To provide the extra services every company needs from time to time.
- * **EQUIPMENT:** Modern, industrial equipment and supplies to get your job done thoroughly and efficiently.
- * **TRAINING:** Proven training methods to let employees know exactly what is expected at each job site.
- * **SUPERVISION:** A key component of our business, to ensure your job gets done right.

Thank you again for your time and interest. If you have any questions, please contact me at:

Phone (334) 222-9208

Very truly yours,
ALANY Divisions Inc.


Clifford Eisenberger
President of Operations